

Department of Legislative Services
 Maryland General Assembly
 2026 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 881
 Finance

(Senator Kramer)

Economic Matters

Financial Institutions and Activities - Licensing Requirements and Regulation of Commercial Financing

This bill establishes a regulatory framework for businesses that engage in “commercial financing” transactions and requires any person engaged in the business of commercial financing in the State to be licensed by the Office of Financial Regulation (OFR) within the Maryland Department of Labor (MD Labor), subject to specified exemptions. Specifically, the bill establishes requirements related to disclosures, annual percentage rate (APR) calculations, repayment terms, and other related items, as well as the extension of special offers. OFR within MD Labor may adopt regulations to implement the bill.

Fiscal Summary

State Effect: Special fund expenditures increase by \$90,000 in FY 2027 for staffing costs. Special fund revenues increase by approximately \$85,000 beginning in FY 2027 from license fees and assessments. The bill’s penalty provisions do not have a material impact on State finances or operations.

(in dollars)	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031
SF Revenue	\$85,000	\$85,000	\$85,000	\$85,000	\$85,000
SF Expenditure	\$90,000	\$106,000	\$110,900	\$116,000	\$121,000
Net Effect	(\$5,000)	(\$21,000)	(\$25,900)	(\$31,000)	(\$36,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill’s penalty provisions do not have a material impact on local finances or operations. No effect on revenues.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Definitions

“Commercial financing” means a type of financing that encompasses “open-end financing,” “closed-end financing,” “sales-based financing,” a “factoring transaction,” or another form of financing. A “provider” is a person that, either directly or indirectly through a third party, extends a specific offer of commercial financing to a recipient. Types of commercial financing are defined as follows:

- “open-end financing” means an agreement for one or more extensions of open-end credit (secured or unsecured). This includes credit extended by a provider under a plan in which (1) the provider reasonably contemplates repeated transactions; (2) the provider may impose a finance charge on an outstanding unpaid balance; and (3) the amount of credit that may be extended during the term of the plan is generally made available to the extent any outstanding balance is repaid;
- “closed-end financing” means a closed-end extension of credit (secured or unsecured), including equipment financing, that does not meet the definition of a lease under the Uniform Commercial Code;
- “sales-based financing” means a transaction that is repaid by a recipient to a provider over time as a percentage of sales or revenue, in which the payment amount may increase or decrease according to the volume of sales made (or revenue received) by the recipient; and
- a “factoring transaction” is an accounts receivable purchase transaction that includes an agreement to purchase, transfer, or sell a legally enforceable claim for payment held by a recipient for goods the recipient has supplied or services the recipient has rendered that have been ordered but for which payment has not been made.

In all cases, the recipient must *not* intend to use the proceeds primarily for personal, family, or household purposes. A “commercial financing transaction” is a transaction in which a provider extends “commercial financing” to a recipient.

A “license” means a license issued in any form by OFR established by the bill to do business as a “provider”, including as provided through the Nationwide Mortgage Licensing System and Registry (NMLS).

A “licensee” means a person licensed by OFR to do business as a provider.

Applicability Provisions

The bill specifies entities and activities that are excluded from regulation under the bill, including (but not limited to): (1) banks, credit unions, or savings associations incorporated or chartered under the laws of any state or the United States (or a subsidiary or affiliate of such entities); (2) commercial financing transactions for more than \$2.5 million; (3) commercial financing transactions related to vehicle dealers or rental vehicle companies; (4) certain commercial financing transactions related to accounts receivable owed to a health care provider; and (5) premium finance agreements related to insurance.

Method of Calculating Annual Percentage Rates

Generally, the bill requires an APR to be (1) expressed as a yearly rate, including all fees and finance charges and (2) calculated in accordance with the federal Truth in Lending Act. In addition, an APR must be calculated based on the estimated term of repayment and the projected periodic payment amounts of a commercial financing transaction, regardless of whether federal law or regulation would require an APR to be calculated for a certain transaction. Additional requirements apply depending on the type of commercial financing.

For sales-based financing transactions, a provider must inform OFR how it intends to calculate the estimated APR of each sales-based financing transaction. By January 1, 2028, and each year thereafter, a provider that elects to use the opt-in method must report to OFR on (1) the estimated annual APR given to each recipient and (2) the actual APR of each completed sales-based financing transaction. If OFR finds there was an unreasonable deviation between estimated and actual APRs of sale-based financing transactions, the licensee may be required to use a different method to determine projected sales volume.

These requirements may not be construed to impose any liability on a provider that charges an APR that differs from the estimated APR disclosed by the provider in accordance with the bill or any regulation adopted pursuant to the bill.

Required Disclosures

The bill establishes numerous disclosure requirements that apply to each type of financing. Although specific requirements differ based on the financing type, generally, the bill requires a provider to disclose certain information to a recipient when extending a specific offer (*e.g.*, the total amount financed and disbursement amount, the finance charge, the estimated APR, etc.). Additional disclosures regarding payment amounts apply depending on whether the payments are fixed or variable, or if a recipient pays off or refinances before the end of the scheduled repayment period. Similar requirements apply for other specific offers.

Required Pay Offs

A provider may require a recipient to pay off the balance of an existing commercial financing transaction from the same provider as a condition of obtaining a new or renewal commercial financing transaction. In such cases, the provider must disclose (1) the amount of the new or renewal commercial financing that will be used to pay off the portion of the existing financing that consists of any required prepayment charges and (2) any unpaid interest that was not forgiven at the time the new financing was entered into. The bill stipulates the manner in which the prepayment charge must be calculated. If the disbursement amount of the new or renewal financing transaction will be reduced to pay down any unpaid portion of the outstanding balance, the provider must disclose the actual dollar amount by which the disbursement amount will be reduced.

Signature

A recipient must sign each applicable disclosure before a provider may allow the recipient to proceed with the commercial financing application.

Additional Disclosures

If a provider provides an additional disclosure, the additional disclosure is not considered a required disclosure (*i.e.*, as required by the bill). The bill specifies the manner in which an additional disclosure must be presented.

Regulations

The regulations adopted by OFR may be substantially the same as regulations adopted by the New York State Department of Financial Services regarding commercial financing. OFR may also approve the use of commercial financing disclosure forms approved for use in other states with requirements that are substantially similar to (or exceed) the bill's requirements.

Enforcement of Credit Provisions

OFR may use the investigative and enforcement powers granted to it in current law to enforce the credit provisions established by the bill. The bill authorizes the Attorney General or State's Attorney for the county in which a violation occurs to prosecute any violation of the bill's regulatory provisions.

Any licensee, as specified, that knowingly violates the bill's provisions governing commercial lending is guilty of a misdemeanor and, upon conviction, is subject to either a fine of up to \$500, imprisonment of up to 6 months, or both.

Licensing Framework, Generally

On or after January 1, 2027, a person may not engage in the business of commercial financing if the person is located in the State unless the person is licensed by OFR or is exempt from regulation as established by the bill.

Privacy and Confidentiality Provisions

The bill establishes that the requirements set forth in the Maryland Public Information Act (PIA) and any federal law regarding the privacy or confidentiality of information or material provided to NMLS and any privilege arising under federal and State law, including those of federal and State court, apply to the information or material after disclosure to NMLS. The bill specifically authorizes the information and material to be shared with all State and federal regulatory officials with oversight of the commercial financing industry without the loss of privilege or the loss of confidentiality protections provided by federal law or PIA. The provisions of the bill regarding the disclosure of information or material supersede any related provisions of PIA.

Any information that is subject to privilege or confidentiality under the bill is exempt from:

- disclosure under any federal or State law governing the disclosure to the public of information held by an officer or agency of the federal government or a state that has received the information or material; or
- subpoena, discovery, or admission into evidence in any private civil action or administrative process unless, with respect to any privilege held by NMLS, the person to whom the information or material pertains to waives, in whole or in part, the privilege.

The bill authorizes the commissioner to enter into information-sharing agreements with: (1) other government agencies; (2) the Conference of State Bank Supervisors; and (3) other associations representing government agencies.

The provisions do not apply to information or material relating to publicly adjudicated disciplinary and enforcement actions against a provider that is included in NMLS and designated for access by the public.

Additional Procedures, Processes, and Specifications

The bill establishes various procedures, processes, responsibilities, and specifications related to licensing commercial financing providers, including those related to:

- eligibility requirements for an applicant to obtain a license from OFR;

- the application process for an applicant to obtain a license from OFR, including that an applicant for an initial license or a license renewal must: (1) apply for the license or renewal through NMLS; (2) pay a nonrefundable license or license renewal fee of \$850 to OFR; and (3) pay any NMLS fee to NMLS;
- issues that OFR must investigate and consider when determining whether an applicant should be granted a license, including that OFR must ultimately approve or deny an application within 60 days after the date a complete application is filed, unless OFR notifies the applicant that a different time period is necessary;
- information that must be included in an application for it to be deemed complete;
- information associated with a license that has been approved by OFR that must be maintained and updated in NMLS;
- processes that must be followed once an application is approved;
- processes that must be followed when OFR denies an application;
- processes that must be followed to renew a license, including that licenses are valid for one year and the requirement for applicants to pay a renewal fee of \$850 to OFR;
- processes that must be followed for a licensee to modify certain information listed in NMLS, including a change of control;
- conditions under which the commissioner may suspend or revoke a license; and
- processes for surrendering or revoking a license.

Enforcement of Licensing Provisions

The bill authorizes the Attorney General or State's Attorney for the county in which a violation occurs to prosecute any violation of the bill's licensing provisions.

A person who violates the licensing provisions is guilty of a misdemeanor and upon conviction is subject to a fine of up to \$5,000, imprisonment of up to three years, or both.

The revocation, suspension, surrender, or other termination of a license does not relieve a person of the obligation to pay any assessment imposed when the license was valid.

Current Law: OFR has the power to vigorously investigate financial transactions to determine whether a person has violated a law, regulation, rule, or order over which the commissioner has jurisdiction. For the purposes of an investigation or proceeding, the commissioner may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, and require the production of documents and other evidence. If a person refuses to obey a subpoena from the commissioner, the commissioner may apply to the appropriate circuit court to issue an order requiring the person to appear before the commissioner and produce any requested evidence. If the court issues such an order, failure to obey it subjects the person to contempt of court.

When the commissioner determines, after notice and a hearing, as specified, that a person has engaged in a violation of a law, regulation, rule, or order, the commissioner may issue a cease and desist order, suspend or revoke the license of the violator, and/or issue a penalty order against the person for up to \$10,000 for a first violation and up to \$25,000 for each subsequent violation.

There is a Non-Depository Special Fund within OFR that consists of specified licensing and related revenue. The purpose of the fund is to cover the direct and indirect costs of fulfilling OFR's statutory and regulatory duties related to regulated persons.

License and Registration Fees

Licensing and registration fees for each type of license or registration are established annually by OFR through a combination of fixed license fees and an assessment structure that matches the costs incurred by OFR during the licensing and supervision process. To the extent the Non-Depository Special Fund within OFR has insufficient funds to meet the target amount for a given year, OFR is authorized to seek an assessment from licensees to replenish the fund.

Public Information Act

PIA establishes that all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. Each governmental unit that maintains public records must identify a representative whom a member of the public may contact to request a public record. The Office of the Attorney General (OAG) must post all such contact information on its website and in any Public Information Act Manual published by OAG.

Duties of Custodians

Generally, a custodian of a public record must permit inspection of any public record at any reasonable time. A custodian must designate types of public records that are to be made available to any applicant immediately on request and maintain a current list of the types of public records that have been so designated. Each custodian must adopt reasonable rules or regulations that, consistent with PIA, govern timely production and inspection of a public record. Chapter 658 of 2021, effective July 1, 2022, requires each official custodian to adopt a policy of proactive disclosure of public records that are available for inspection under PIA, as specified. PIA also establishes when custodians *must* deny inspection of records and when they *are authorized* to deny inspection.

Nationwide Mortgage Licensing System and Registry

Maryland uses the Nationwide Mortgage Licensing System and Registry, universally known as “NMLS,” for licensing and renewal of money transmitters.

State Fiscal Effect:

Licensing Fee Revenues

The bill establishes an \$850 license and license renewal fee to be paid to OFR. A preliminary analysis by OFR indicates that 50 entities will apply for the license established under the bill, generating \$42,500 in special fund revenue. Moreover, OFR indicates that it will apply an \$850 assessment on the licensees, which matches the assessment amount previously applied to consumer lenders, generating an additional \$42,500 in special fund revenue. Therefore, special fund revenues for the Non-Depository Special Fund increase by approximately \$85,000 annually beginning in fiscal 2027. As all providers must be licensed by January 1, 2027, fee revenues are not pro-rated in fiscal 2027.

Administrative Costs

OFR advises that it lacks the capacity or expertise to implement the regulatory and licensing provisions established under the bill with existing personnel, and the Department of Legislative Services (DLS) concurs. Therefore, special fund expenditures for MD Labor increase by \$90,008 in fiscal 2027, which accounts for the bill’s October 1, 2026 effective date. This estimate reflects the cost of hiring one Lead Financial Examiner to perform the functions required by the bill, including evaluating applicants, and overseeing commercial financing entities, and investigating complaints. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$80,867
Other Operating Expenses	<u>9,141</u>
Total FY 2027 State Expenditures	\$90,008

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

DLS notes that the bill includes numerous exemptions from its provisions, so it is unclear how many commercial lenders are affected by the bill. To the extent that there are significantly more entities in the State than expected over multiple years, revenues are greater and OFR may need to hire additional staff and pay for information technology services from the Office of Information Technology (within MD Labor).

The Judiciary can handle any increase in caseloads (likely minimal) with existing resources.

General fund revenues may increase minimally under the bill's penalty provisions for those cases heard in the District Court. However, any impact on general fund revenues (due to the penalty provisions) is expected to be minimal.

Local Fiscal Effect: Local revenues may increase minimally under the bill's penalty provisions for those cases heard in the circuit court. However, any impact on local revenues is expected to be minimal.

Small Business Effect: The product standards, lending requirements, and licensing requirements established by the bill may benefit small businesses by allowing them to borrow in a transparent and affordable manner. However, the commercial lenders subject to the bill's requirements may incur additional compliance costs, to the extent such lenders are small businesses based in the State. However, any such impact cannot be reliably determined without additional information (*e.g.*, the number of lenders in the State affected by the bill).

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 693 and SB 754 of 2025, HB 574 and SB 509 of 2024, and SB 469 of 2023.

Designated Cross File: HB 1007 (Delegate Fraser-Hidalgo) - Economic Matters.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Department of Legislative Services

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