

Proposed Amendments to New York Financial Services Law

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August 12, 2020 | **CLIENT ALERTS**

On July 23, 2020, the Senate and Assembly passed N.Y. Senate Bill S5470B, requiring certain non-bank providers of commercial financing to disclose certain specific information to potential commercial borrowers. This bill would amend New York Financial Services Law by adding a new Article 8. The bill has not, as of this date, been delivered to the Governor or signed into law by the Governor. It will take effect one hundred eighty days after becoming law.

To view the bill, click [here](#).

The bill generally acts as a supplement to the Truth in Lending Act (TILA)—the primary federal law regulating consumer credit. Bill S5470B, however, would apply to **commercial credit** and would require certain private lenders to make TILA-like disclosures on many loans of less than \$500,000 extended primarily for business or commercial purposes. Specifically, the bill is intended to increase transparency in the small business, commercial financing space by requiring additional disclosures in commercial financing documents. By requiring commercial financing providers to disclose specified cost information to borrowers prior to accepting financing, the bill's sponsor (Senator Kevin Thomas) believes borrowers will be able to make better-informed, financially responsible decisions and compare pricing and costs across providers. Senator Thomas stated that the bill is intended to benefit small businesses (which make up 99.8% of all New York business and employ 50.2% of the private workforce) who have, in recent years, increasingly relied on private lenders for financing.

If this bill becomes law, it will apply to “providers” (including lenders and those who solicit loans from lenders) of loans intended to be used primarily for business or commercial purposes. Providers may rely on the borrower’s statement of intended purpose. This statement may be made as part of a separate agreement; contained in the financing application, financing agreement, or other signed or consented to document; or provided orally by the recipient and documented by the provider. Covered providers must disclose specific financial terms at the time commercial financing is offered and before the borrower accepts the offer.

The bill applies to “commercial financing” as specifically defined in the bill and which generally includes lines of credit, term loans, sales-based financing, factoring transactions, and renewal financing. The bill also applies to other forms of financing - as may be determined by the New York Superintendent of Financial Services - that do not fit neatly into one of the enumerated categories, but which otherwise fit the description of commercial financing. It does not apply to transactions that are secured by real property, true leases or loans over \$500,000.

The bill does not apply to “financial institutions” (such as federally or state chartered banks, saving and loan associations and credit unions), lenders regulated under the Farm Credit Act, any person who makes five or fewer commercial transactions within a twelve month period, or technology services providers to other exempt providers

(subject to some limitations).

Under this bill, applicable providers could be required to disclose the following information in a format to be determined by the Superintendent:

- The amount of financing (which may be defined differently depending on the type of financing);
- The disbursement amount (if different than the amount of financing or adjusted as part of renewal financing);
- The finance charge;
- APR;
- Total repayment amount;
- Term;
- Payment amounts;
- Any other related fees;
- Prepayment penalties;
- A description of any collateral; and/or
- A description of the receivables purchased.

Not every category of commercial transaction will require every disclosure, and some categories contain further conditions or limitations.

If you have any questions about how this proposed legislation could affect your business, if your financing is likely to fall under one of the defined categories, what disclosures need to be made for your specific category of commercial financing, or any other questions or concerns please contact us at Lippes Mathias.