LEGAL UPDATES

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New California Law Prohibits Certain Fees in Commercial Financing

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California continues to lead the charge for increased regulation in the commercial finance space. Most recently, on October 13, 2023, California Governor Gavin Newsom signed Senate Bill 666 into law, which will prohibit commercial financing providers from charging "small businesses" certain fees for financing. The law goes into effect on January 1, 2024. In recent months, California also finalized a rule to prohibit unfair, deceptive, or abusive acts or practices in connection with commercial financing and impose an annual reporting requirement for certain commercial financing providers.

Commercial financing fee limitations

The bill limits or restricts the following fee categories:

1. Payment processing fees for payments required by ACH debit transfers (except in cases of insufficient funds);

2. Fees for payoff statements;

3. Fees, in addition to a loan origination fee, that lack a clear corresponding service for the fee such as a platform fee;

4. Collateral monitoring fees (unless the transaction is delinquent for over 60 days); and

5. Fees for filing or terminating a lien against a business's assets when the fee exceeds 150% of the actual cost of filing or termination.

S.B. 666 applies to commercial financing transactions to small businesses, including factoring and revenue-based financing, equal to or less than $500,000. The bill defines "small business" as an independently owned and operated business, not dominant in its field, with its principal office and

officers domiciled in California that, together with affiliates, has 100 or fewer employees and average annual gross receipts of $15,000,000 or less over the previous three years. This is a more limited scope compared to California's broader commercial financing disclosure law, which applies to all recipients "principally directed or managed from" California. S.B. 666's fee restrictions do not apply to certain commercial transactions, including real property-secured transactions, or certain providers like depository institutions.

A violation of the new law could carry actual damages, including but not limited to the amount of the prohibited fees paid by the recipient, and statutory damages between $500 and $2,500. The legislation also allows for injunctive relief, attorneys' fees, costs, and "any other relief that the court deems proper."

What this means to you

California's enactment of S.B. 666 underscores a growing trend towards stricter regulatory oversight over nonbank commercial finance practices, particularly those impacting small businesses. If California's S.B. 666 has the same ripple effect that its commercial financing disclosure law did, we can expect other states to follow suit here as well. While aimed at fostering transparency and protections for small businesses, the restrictive fee framework and the amplified legal recourse may pose operational and financial challenges for finance providers in the space.

Lenders, factoring companies, merchant cash advance firms, and other covered entities should meticulously review their customer agreements to ascertain if any prohibited fees are being levied. Modifying or eliminating a fee by a covered entity may have repercussions concerning not only the customer agreement but also the disclosures required by California law. For example, such alterations could potentially affect the finance charge, and consequently, the Annual Percentage Rate (APR). Conducting a comprehensive analysis to understand how this new law may influence your business operations.

Contact us

We have been tracking the increased regulatory requirements on financing to small businesses in California and other states. Contact Christopher Friedman, Susan Seaman, Alex McFall, Shelby Lomax, or your Husch Blackwell attorney if you have questions on new state regulation of commercial financing products.