

Date of Hearing: June 17, 2024

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

SB 1521 (Committee on Banking and Financial Institutions) – As Introduced March 11, 2024

SENATE VOTE: 37-0

SUBJECT: Commercial financing transactions: fees

SUMMARY: Allows for certain types of collateral monitoring fees on commercial financing transactions.

Specifically, **this bill:**

- 1) Exempts the following from an existing prohibition on collateral monitoring fees:
 - a) A collateral monitoring fee charged when the commercial financing transaction is an asset-based loan or factoring, and the fee is intended to compensate the covered entity for actions taken to validate the collateral with the intended purpose of maximizing the amount of financing provided to the small business or small business owner under the financing contract pursuant to which the fee is charged.
 - b) A collateral monitoring fee expressed as a dollar amount or a percentage of an identifiable base, and the fee is deemed a finance charge, as specified.

EXISTING LAW:

- 1) Prohibits the following fees from being charged to a small business in connection with a commercial financing transaction:
 - a) A fee for accepting or processing a payment required by the terms of the financing contract as an automated clearinghouse transfer debit.
 - b) A fee for providing a small business with documentation prepared by the financing provider that contains a statement of the amount due to satisfy the remaining amount owed, including, but not limited to, interest accrued to the date the statement is prepared and a means of calculating per diem interest accruing thereafter.
 - c) A fee in addition to an origination fee that does not have a clear corresponding service provided for the fee, including, but not limited to, a risk assessment, due diligence, or platform fee.
 - d) A fee for monitoring the small business's collateral, unless the underlying financing transaction is delinquent for more than 60 days.
 - e) A fee for filing or terminating a lien filed in accordance with the provisions of the Uniform Commercial Code against the business's assets that exceeds 150 percent of the cost of the filing or termination. (Civil Code Section 1799.302)

- 2) Defines “commercial financing” to have the same meaning as Section 22800 of the Financial Code, related to commercial financing disclosures, which provides that “commercial financing” means an accounts receivable purchase transaction, including factoring, asset-based lending transaction, commercial loan, commercial open-end credit plan, or lease financing transaction intended by the recipient for use primarily for other than personal, family, or household purposes.
- 3) Defines “small business” as an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and that, together with affiliates, has 100 or fewer employees and average annual gross receipts of \$15 million or less over the previous three years.

FISCAL EFFECT: Unknown. This bill is keyed Fiscal by Legislative Counsel.

COMMENTS:

1) Purpose.

SB 1521 is authored by the Senate Committee on Banking and Financial Institutions. According to the Committee:

SB 1521 is clean-up legislation related to SB 666 (Min, Chapter 881, Statutes of 2023), which passed the Legislature with zero “no” votes. The law enacted by SB 666 proscribes the charging of specified fees on commercial financing transactions. Senator Min and the sponsors of SB 666 approved the amendments to that law that are contained in SB 1521. The amendments allow for collateral monitoring fees to be charged in specified circumstances related to commercial financing transactions.

2) Background: The recent policy focus on “junk fees.”

In 2022, the Biden Administration announced a new initiative to reduce or eliminate hidden fees, charges, and add-ons for banking services as well as non-financial services such as cable, airline tickets, and concert tickets. Collectively termed “junk fees,” these fees are believed to “weaken market competition, raise costs for consumers and businesses, and hit the most vulnerable Americans the hardest.”¹

The Biden Administration points to four broad, and sometimes overlapping, categories of junk fees:

- Mandatory fees that often hide or confuse the full price that will be paid by a consumer, such as concert service fees.
- Surprise fees that consumers learn about after a transaction, such as surprise hospital bills or undisclosed voluntary fees such as airline “family seating fees.”

¹ <https://www.whitehouse.gov/briefing-room/blog/2022/10/26/the-presidents-initiative-on-junk-fees-and-related-pricing-practices/>

- Exploitative or predatory fees, which is defined as fees that “far exceed the marginal cost of the service they purport to cover.” Such fees often target consumers who have limited options because those consumers are locked into a product or service.
- Fraudulent fees that involve fraud or misrepresentation. The White House cites the example of advertised “no fee” bank accounts that carry significant indirect charges.

The Biden Administration also notes that junk fees disproportionately impact lower income households and people of color. For example, consumers in low-income and majority-Black neighborhoods paid disproportionately more in credit card late fees, and the National Consumer Law Center found in a 2017 report that Hispanic car buyers paid more in extra add-ons such as service contracts.

3) Background: The recent policy focus on small business lending.

Small businesses must navigate a highly complex, fragmented, and quickly-evolving lending market. For even savvy borrowers, understanding available options can be time-consuming and confusing, made more difficult because commercial financing is not covered by long-established federal statutes such as the Truth in Lending Act (TILA). As the Consumer Financial Protection Bureau (CFPB) notes about the small business lending market:

The market is fragmented across numerous different product types, making small business lending very different from residential mortgage lending. Among other sources of financing, small businesses use credit cards and lines of credit; equipment, vehicle, and other closed-end loans, both secured and unsecured; and merchant cash advances. Some lenders offer a variety of products while others specialize.²

Historically, issues around transparency and equity in the small business lending market have been underexplored by California policymakers. This has changed in recent years amid studies and reports documenting the challenging lending environment for small businesses, especially businesses located in low-income or disadvantaged communities or owned by people of color.

In response to the proliferation of complex and costly commercial lending products, the Legislature passed SB 1235 (Glazer), Chapter 1011, Statutes of 2018, to require the Department of Financial Protection and Innovation (DFPI) to establish standardized commercial financing disclosures as well as SB 666 (Min), Chapter 881, Statutes of 2023, to eliminate certain junk fees from commercial financing transaction. These legislative efforts aimed to help small business borrowers compare and evaluate financing options and avoid unnecessary or surprise fees and expenses.

4) What does SB 1521 do?

SB 1521 clarifies provisions in the above-mentioned SB 666, which expanded on the Biden Administration’s efforts to limit the proliferation of junk fees by prohibiting certain fees charged to small businesses for financing and loan products.

² https://files.consumerfinance.gov/f/documents/cfpb_small-business-lending-rule-fact-sheet_2023-03.pdf

Specifically, SB 1521 includes new exceptions to SB 666's prohibition on fees charged for monitoring a borrower's collateral. The initial justification for SB 666's prohibition of this type of fee were reports that some financing providers would monitor the borrower's collateral and then assess a surprise fee to the borrower for this service, even when the borrower was in good standing. However, since SB 666's passage, stakeholders have provided additional information about how these fees can work, including instances when these fees cover variable costs incurred by the financing provider. In such cases, provider expenses for this monitoring can change during shifting business conditions or when the borrower requests additional financing.

In response to this feedback, SB 1521 provides the following two exemptions:

- The commercial financing transaction is an asset-based loan or factoring, and the fee is intended to compensate the covered entity for actions taken to validate the collateral with the intended purpose of maximizing the amount of financing provided to the small business or small business owner under the financing contract pursuant to which the fee is charged.

The fee is expressed as a dollar amount or a percentage of an identifiable base, and the fee is deemed a finance charge, as described in Section 943 of Subchapter 3 of Chapter 3 of Title 10 of the California Code of Regulations

REGISTERED SUPPORT / OPPOSITION:

Support

None received.

Opposition

None received.

Analysis Prepared by: Luke Reidenbach / B. & F. / (916) 319-3081