BREAKING NEWS: In July of 2021, Grant Phillips Law, settled four (4) MCA positions totaling $8,000,000.00 for $3,000,000.00– **saving our clients $5,000,000.00M**

GRANT PHILLIPS LAW

A MERCHANT CASH ADVANCE LAW FIRM

NEWSLETTER

December, 2022 – GPL Newsletter - Volume 4 Issue 4

GRANT PHILLIPS LAW, PLLC

We are delighted to bring you the December 2022 issue of ***CREDIT CORNER*** and ***MCA CAFÉ***

(The Latest News In Merchant Cash Advance – Page 4)

KNOWLEDGE IS POWER

STAY INFORMED ON DEVELOPMENTS IN:

- ✓ *MERCHANT CASH ADVANCE*
- ✓ *DEBT SETTLEMENT*
- ✓ *NEW YORK's NEW LAW ON Merchant Cash Advances*
- ✓ *CREDIT AND REPORTING*

GRANT PHILLIPS LAW, PLLC
516.670.5165
www.grantphillipslaw.com

Get out of Debt.
Improve your Credit.

CREDIT CORNER NEWSLETTER

"GET RID OF MERCHANT CASH ADVANCES - DEBT RELIEF – SETTLEMENTS – UCC LIENS – JUDGMENTS."

In this issue of Credit Corner you will find:

THE 3 MINUTE BUDGET

Creating a budget can feel overwhelming and boring. *So we created the 50/30/20 Budget.* This is how it works: Take 50% of all your net income (wages, commissions, investments, social security, trusts, stocks or any other form of income and money you receive), the 50% is after tax money. This money should be used for your NEEDS such as rent mortgage, food car gas electricity student loans copays clothes and anything else that is NEEDED IN ORDER TO LIVE.

Next, take 30% of all your net income and use to cover your WANTS, for example vacations, jewelry, restaurant food, fancy clothes, electronics, Starbucks and all other expenses that you would like, but that are NOT NEEDED TO LIVE.

Finally, the remaining 20% of all income should be put away for SAVINGS. There is nothing like having money for a "rainy day." Try to save as much as possible and aim for 20% of all your next income.

The "3 Minute Budget"

50% Needs
30% Wants
20% Savings

WHAT IS THE COST TO FILE CHAPTER 7 BANKRUPTCY?

How much does it cost to file a Chapter 7 bankruptcy?

1. Mandatory Court Filing Fee - $335.00
2. There are two mandatory credit and budget courses to take over the phone - $20.00
3. Attorney's Fees: Ranges from $1,500 to $2,000, depending on case complexity.

WHAT IS THE COST TO FILE CHAPTER 13 BANKRUPTCY?

How much does it cost to file a Chapter 13 bankruptcy?

1. Mandatory Court Filing Fee - $310.00
2. Attorney's Fees: Ranges from $3,000 to $4,500, depending on case complexity.

CAN I FILE BANKRUPTCY WITHOUT AN ATTORNEY?

Yes, you have every legal right to file bankruptcy without an attorney (Pro Se). However, the success rate is very low compared to debtors that hire an attorney. Let's review the numbers: Of the Chapter 7 cases filed Pro Se, only 46% of these filings are allowed by the Courts. More than half of those filing alone, don't get rid of their debts and their cases are dismissed. With an attorney, the success rate for a successful bankruptcy filing jumps to 97%.

HOW MUCH MONEY DO I HAVE TO PUT DOWN TO BEGIN?

$100 - At Grant Phillips Law, we understand times are extremely hard. The Coronavirus has hurt millions of hard working Americans. We want to help. We want to give back to our community and so to start a Bankruptcy Chapter 7 case for $100.

WILL YOUR LAW FIRM STOP THE COLLECTION CALLS AND HARASSMENT?

Yes, as a client of the firm, you are free to let ALL your creditors and debt collectors and collection lawyers that you have hired an attorney and give them our number. Let us deal with your creditors. You work on rebuilding your life. Our law firm will stop your Merchant Cash Advance Funders from contacting you again by phone, text and letter.

We are here for YOU.
Let us alleviate your stress.

"The Coronavirus has destroyed countless lives and left many without jobs and savings. We all have a responsibility to help our fellow citizens and neighbors."

WHAT DOES IT MEAN TO "DECLARE" BANKRUPTCY?

To file bankruptcy and declare bankruptcy is the same thing. Bankruptcy is a legal process created to eliminate debt and provide a fresh start to debtors. The process formally and legally begins with the official filing of the necessary paperwork with the local bankruptcy court. Once filed a case number will be generated. At this time the debtor has formally *declared bankruptcy*. They have put their creditors, the court and the world on notice that they have filed, declared or lodged a bankruptcy filing. According to the dictionary, declare means "to make known formally." Thus, when filed, a bankruptcy is "known" and the debtor has declared bankruptcy.

6 TIPS TO INCREASE YOUR CREDIT SCORE:

1. EARLY AND FULL – Pay your credit card balance each month in full and before you receive the bill in the mail. For example you have a credit card and right now you owe $50 and the payment is due in 2 weeks. Make the payment TODAY for the FULL $50 and your score will rise very quickly.

2. SLOW AND EASY – Rebuilding credit is not as difficult as it seems. Time & Tips will increase your scores.

3. SECURED CREDIT CARD *(REPORTING AS CREDIT CARD)* - Obtain a Secured Credit Card. This is a credit card that takes the money it extends to you and keeps it in "escrow" in case you default. There are secured credit cards that work this way BUT that REPORT TO THE CREDIT AGENCIES like it is an actual credit card. This helps your score as you can get a secured card for $100 credit and use it 1 time a month to buy a soda for example and pay on time and in full and the payments will be reported as Credit repayments and increase your score.

4. DON'T PAY – PULL YOUR FREE REPORTS – if you need to look at your credit, try to obtain those copies you entitled to free every year from the credit agencies. They are free. Before paying a company, look for the free credit reports you are entitled to from Experian Equifax and Transunion every year.

5. EXPERIAN BOOST – Go to the Experian Website. Search for "Credit Boost" this is service offered directly from Experian to increase your score by at least 10-15 points. At the time of writing this, the service is free.

6. On-time payment history is the most important factor in your credit score, accounting for 35% of your total score, according to FICO. **Pay on time**!

WHAT MAKES UP YOUR CREDIT SCORE?

1. **Payment history**, is 35% of your score, and includes your history of repaying account debts.
2. **Credit utilization**, is 30% of your score, it shows your credit usage versus your credit limits.
3. **Length of credit history** is 15% of your score. It shows how long you've had active credit accounts.
4. **Types of credit**, is 10% of your score, and shows the variety of your accounts.
5. **Credit inquiries**, is 10% of your score it shows the number of inquiries made to your credit profile.

MCA – CAFÉ Newsletter

MERCHANT CASH ADVANCE

Updates and News.

In this issue:

WHAT IS A MERCHANT CASH ADVANCE?

Beginning early 2010, after the Great Recession, when the American housing market blew up, traditional banks for example, Chase, Wells or Citi were unwilling to extend loans to small businesses. While the global housing and financial markets recovered, both self-regulation and Government regulation over conventional banks, meant that small businesses were unable to obtain loans, financing and credit to help their businesses.

In other words, post the Great Recession, the standards for lending by traditional banks were so cumbersome and difficult, that small businesses were unable to meet the banks "new" underwriting standards, leaving small business with very little choice for financing and borrowing.

The void in small business lending post the Great Recession lead to the creation of SMALL BUSINESS, HARD MONEY LOANS, giving birth to the "Merchant Cash Advance." (MCA)

An MCA is a small business loan extended against the future credit card and account receivables of the small business. The MCA industry has grown year over year. Unfortunately the current State Laws permit anyone to become an MCA Lender. There is no licensing or regulation. State laws do nothing to protect small business and their owners from these treacherous loans. These loans are permitted to charge ANY AMOUNT of interest they like! Sadly, it is also "Legal" and not considered usury because the purchase of future receivables is not considered a loan by the law and only a loan is subject to State Usury Laws. It's a full decade later and the MCA industry remains unregulated and the Wild West.

Respectively, this law firm states "Do not take out an MCA loan for you will not be able to afford the daily payments and interest and it can destroy your business."

"Do not take out an MCA Loan for your business, it is highly likely you will not be able to afford the daily payments and interest and the MCA can destroy your business!"

ALTERNATIVES TO MCA LOANS *

** Please note Grant Phillips Law has no affiliation with any company or product listed in this newsletter and any mention thereof, is for informational purposes only and not an endorsement of any kind. Do not rely on any company or product mentioned in this newsletter.*

1. Lendio is a reasonable resource for small business owners who want to apply to a large number of lenders with a single application. Think of the company as a matchmaker for small business borrowers and small business lenders. Generally, after filling out a single application, Lendio will shop your loan request to 65+ lenders. Please note that Lendio works with affiliates and partners, thus you should ask for a recap and summary of all offers and be sure that what you select is indeed a CONVENTIONAL loan. Steer clear of anything with fine print and anything that references "receivables." If you require assistance in determining the type of loan and the fine print surrounding it, call Grant Phillips Law.

2. StreetShares Originally founded by veterans for veteran owned businesses, today StreetShares is available to non-veterans. StreetShares offers business financing that includes term loans and lines of credit. Make sure to ask and receive the ACTUAL APR on any product you consider. Steer clear of their factoring products and never enter into a Merchant Cash Advance type loan. Be sure there is NO mention of "receivables" and that your repayment is MONTHLY. This law firm has seen term loans of up to 36 months and APRs on both lines of credit and term loans ranging anywhere between 7% and 30%.

3. Fundation offers term loans and lines of credit for small businesses. Although more difficult to qualify for, Fundation has competitive rates. Fundation term loans have a maximum borrowing amount of $500,000 and lines of credit max out at $100,000. APRs for both products fall between 7.99% and 29.99%.

4. Small business Administration Loans (SBA) simply, an SBA loan is a small business loan that is partially guaranteed by the Government. Due to this government guarantee, (think of it like an insurance policy from the SBA to the actual SBA lending bank that if the borrowing business fails and the loan goes delinquent, the lending institution will receive up to 80% of the loan provided back from the government) Due to this government created "repayment insurance," lending banks are able to provide highly competitive interest rates to qualified small businesses. This is because the government backing eliminates some of the risk for the financial institution who is issuing the loan. In turn they will lend to qualified borrowers at the lowest interest rates in the industry. Be aware, it is *not* the SBA who is doing the lending. The SBA works with a network of approved financial institutions (typically, traditional banks) that lend money to small businesses.

5. SmartBiz uses technology to speed up the process of applying for an SBA loan for working capital, debt refinancing and equipment or real estate purchasing. SmartBiz will not eliminate the paperwork required to get an SBA loan, however it speeds up the process by allowing borrowers to see if they qualify for a SBA backed loan in as little as a few minutes. SmartBiz also assists borrowers to assemble a complete SBA loan application package. Please note, SmartBiz may speed up the application process, but you and your business are still required to meet SBA borrowing requirements. If you're eligible, you'll have a hard time finding rates better than those offered by the SBA.

WHY A QUALIFIED ATTORNEY IS BEST SUITED TO SETTLE YOUR MCA LOAN

A qualified MCA Attorney is best equipped to bring total and lasting relief from the strangulation of Merchant Cash Advance loans.

As a law firm licensed & practicing in Florida, New York and New Jersey, with a focus on settling or litigating against Merchant Cash Advance loans (MCA), we are receiving more and more clients, who were once signed into a debt settlement program, allegedly focused on eliminating their MCA loan(s). These so called debt settlement companies are not attorneys and not law firms, yet unknowing clients desperate to receive some relief from the burdens of an MCA, sign up for one of these programs, only to find out later that no work was performed or that the Merchants lender refuses to deal with the "debt settlement company." Worse yet, when the Merchant realizes what has transpired, it is usually too late, as they have already paid exorbitant sums of money to these surreptitious companies, but their MCA debt was not settled or dealt with. Many of these non-attorney practitioners fail to inform Merchants of their limitations, instead choosing to "roll the dice" with the Merchants Business.

Most MCA funders have internal or outside attorneys that represent their interests. A qualified attorney can negotiate with the funder's attorney on equal terms and with knowledge of the law and the nuances involving an MCA loan. On the other hand, a non-attorney is legally prohibited from giving legal advice, do not understand the law and or the funders attorney refuses to negotiate or communicate with such companies. These companies also fail to inform the Merchant that their "services" are merely a negotiation and not a legal one at that and that the funder or their attorneys and or their collection agencies have no obligation to communicate at all with the settlement company. They don't know or intentionally fail to inform the Merchant about forgiven debt and the IRS tax consequences. The last straw is when these debt settlement experts instruct the Merchant to stop paying or to change credit card processors and or bank accounts! These "instructions" are all breaches of the MCA contract. No qualified attorney will instruct you to breach a contract. Rather with experience, skills and the necessary legal knowledge your MCA attorney will work with the funder to resolve each issue methodically. Despite the plethora of problems that exist with using non-attorneys to settle a Merchant Cash Advance, the clandestine settlement companies are signing up thousands of unassuming hard working Merchants on a daily basis.

An experienced and qualified MCA attorney and law firm know the intricacies of an MCA loan and the law governing its mechanisms. Accordingly, if any illegalities exist, the attorney can litigate against the funder if necessary. *This law firm has litigated and sued many funders for breaches of the law and contracts.* Whereas a non-attorney debt settlement company cannot engage in a lawsuit. Provide no fiduciary obligations to the Merchant and are free to do as they wish with the Merchants positions and so called settlement money. They do not know the law. They are unlicensed and cannot sue or enter legal negotiations for the Merchant.

RECONCILIATION CLAUSES – WHAT TO KNOW

Every Merchant Cash Advance contract should include a Reconciliation Clause. This is a mechanism whereby a merchant can seek to have the actual receivables reconciled with the daily percentage the funder takes from the receivables and the fixed daily amount of money to be debited. If the daily percentage and daily fixed payment amount exceed the actual receivables, such a clause instructs the funders to lower the Merchants payment in proportion to the actual receivables.

The reason for its inclusion is to satisfy the legal requirement that a bona fide MCA loan is not repayable absolutely. In other words a legitimate funder will not require the Merchant to repay irrespective of circumstance. Rather, by including a legitimate Reconciliation Clause in their contracts, with genuine intention of fulfilling it, if it became applicable, the payment is not absolute and a reconciliation is possible. Even if the contract contained a true reconciliation clause, it would be a moot point if the funder did not honor it. Be careful many contracts only allow for a reconciliation if the Merchant is current on their account.

Let the attorneys here at Grant Phillips Law review your MCA contracts for any illegalities and discrepancies.

We are delighted to inform you of our latest legal victory in the fight against Merchant Cash Advance lender abuse.

In September of 2021, Grant Phillips Law, PLLC was retained to restructure the DAILY ACH payments of $1100.00 and $768.00 respectively. These represented DAILY payments on two (2) MCA positions. Covid and the lack of drivers was hurting our clients trucking business. It became too expensive to pay these daily payments and the revenues and receivables did not support the taking of the merchant's hard earned revenues.

Grant Phillips Law 1. Removed all UCC filings, 2. Restructured the daily payments into FIXED MONTHLY PAYMENTS, free of any interest or legal fees, to be paid over a period of Twenty Four (24) months.

The Payment schedule is now $350 and $200 MONTHLY

In addition, our representation immediately stopped the lawsuit filed against our client for default and for stacking and 3) we obtained a full, final and legally binding settlement, free of litigation and without bankruptcy!

LEGAL NOTICE

NEW YORK PASSES

MERCHANT CASH ADVANCE

REGULATION

Grant Phillips Law, PLLC

LEGAL GUIDE

NEW YORKS COMMERCIAL

LENDING LAWS

COMMENCING - JANUARY 1ST 2022

New York State Adopts Truth In Lending (TILA) – Like Disclosure Law for Business Loans, including Merchant Cash Advance and Purchase of Future Receivables, otherwise referred to as S.B 5740

The Birth of S.B 5470

On December 23rd of 2020, New York State Governor Andrew Cuomo signed Senate Bill 5470 or S.B. 5470 into law.

https://www.nysenate.gov/legislation/bills/2019/s5470

What is S.B 5470?

S.B. 5470 is a New York law requiring non-bank lenders to provide corporate borrowers specific disclosures in the loan paperwork and prior to formal consummation of the loan. The law was enacted in order to create more transparency for small business borrowers surrounding their application for credit from non-conventional banking institutes

What is the Intent of the New Law?

The intent of S.B 5470 is to provide corporate and small business borrowers with more transparency surrounding their taking of credit, in order to allow for better, more informed decisions, a clearer understanding of how much is being borrowed and under what terms and to provide a corporate borrower with the ability to compare differing offers of credit.

Does it apply to a Merchant Cash Advance?

Yes. The newly enacted law specifically names a Merchant Cash Advance as one specific form of corporate financing that S.B. 5470 governs.

It's About Disclosure and Transparency

The new law imposes multiple disclosure requirements similar to TILA (Truth in Lending), on funders and providers of corporate financing including Fintech, Factors and Merchant Cash Advance transactions.

Prior to enactment there was no uniform methodology for the disclosure of vital components of the credit being extended to a businesses, such as the total amount being borrowed, total amount of repayment, total interest cost, annual percentage rate and a host of other disclosures, to be discussed later in this article.

Now however, S.B 5470 provides a certain protection for corporate borrowers, by virtue of the mandatory disclosure requirements it places on funders and providers of corporate financing, when such financing is less than $500,000.00.

When does S.B. 5470 Commence?

The new TILA-like Disclosure requirements were signed into law on December 23rd of 2020 with an original commencement date of June 21, 2021. However, since passing S.B. 5470 the New York Senate has provided additional guidance and updates (In March 2021) and included in this update is a new date for commencement of the law to begin January 1st, 2022.

Whom does S.B 5470 Govern?

The Disclosure Law applies to non-exempt "providers" of "commercial financing." This definition will be expanded upon further into this article.

What are the Keys to S.B. 5470?

To be compliant with New York's S.B 5470 Disclosure Laws, providers of corporate finance that is less than $500,000.00, such funders and providers must:

1. Disclose Key Transaction Terms to corporate borrowers and;
2. Obtain the Borrower's Signature prior to Consummating a Transaction.

How will the new law be governed and monitored?

The protocol and format of how lenders will issue, maintain and comply with the new law and the manner by which lenders will be monitored, will be prescribed by the New York Department of Financial Services (DFS). At time of writing this article, the DFS have yet to issue guidance or provide instruction on Format and Compliance.

Ground Breaking Protections for Corporate Borrowers

Notwithstanding the lack of DFS guidance thus far, the law is categorical in its underlying intent and drive. New York is looking out for small business at home and across the country. S.B 5470 is groundbreaking in so far as it mandates that certain disclosures be provided to corporate borrowers, thereby providing a corporate borrower with protection from lending abuses perpetrated on small business and merchants across the United States.

New York Joins California in Passing Disclosure Law.

New York follows the State of California by enacting this type of law and like California, New York's newly enacted statute, applies to a Merchant Cash Advance.

Like California, New York is trying to clean up its reputation as the bedrock and home of most Merchant Cash Advance, Confessions of Judgments and other predatory loan type scams. New York State has spoken. It is standing up and telling providers and lenders of credit to businesses, to disclose critical terms and to be transparent and accurate or face consequences.

What is the Protocol for S.B 5470?

While S.B. 5470 is yet to commence, questions arise. More specifically, questions about protocol and details about the mechanics of how, where and when to disclose exist. While details such as these remain outstanding, the law is nevertheless a massive win for small business and

record setting by virtue of the existence of a law that provides protections to small businesses against lending abuses.

From Conversation to Law

The law is not a finished product. However, it makes tremendous strides in curbing predatory and corporate lending abuses. Prior to enactment, issues of predatory lending, for example with a Merchant Cash Advance, were merely part of discussion. Now there is law. S.B. 5470 governs providers and funders of credit to small businesses, including Merchant Cash Advance arrangements and other forms of agreements for the purchase of future receivables and by requiring such lenders to comply with the S.B. 5470 disclosure requirements, a merchant and corporate borrower are afforded real legal protection.

Can S.B. 5470 Catch Up to Fiscal Invention?

Perhaps. Time will tell. With advent of financial technology, providers and lenders of corporate finance have become more sophisticated and continually seek to "invent" new and complex lending structures that bad actors can use to engage in predatory and lending abuses. S.B 5470 seeks to govern these creations and inventions by requiring the disclosures delineated in more detail further into this article.

New York Protecting Small Business

The New York Truth in Lending/TILA Disclosure Law, shows a clear and unambiguous intent on the part of the New York Legislature. No more predatory loans! Not here. This directive includes its chief protagonist, namely the infamous Merchant Cash Advance. New York has begun to regulate the Merchant Cash Advance industry and together with California, provides fiscal protection to corporations and businesses (Emphasis added).

S.B. 5470 goes a long way to right potential corporate lending abuses. It educates the merchant borrower, allowing for an informed and educated decision when shopping for a business loan, by forcing providers and lenders of corporate credit to disclosure material information and

will expand to govern future potential lending abuses as more transaction types fall within the ambit of the law.

Will S.B. 5470 Eliminate All Corporate Lending Abuses?

Don't expect the law to eradicate all corporate lending abuse however. We expect to continue to see certain illegalities and abuses such as the inclusion of a Confession of Judgment or other illegal documents in Merchant Cash Advance lending packets and other parts of the Merchant Cash Advance contract with possible illegal clauses, notwithstanding the new laws. Unfortunately, human greed cannot be regulated absolutely. However, regulation will bring uniform standards and better choices for borrowers, eradicating many Merchant Cash Advance scams and revealing those transactions which in fact and law are loans merely discussed as an MCA.

Is a Merchant Cash Advance Legal?

Provided certain disclosures are met pursuant to S.B. 5470 and that risk to changes in receivables are carried and borne entirely by the lender, coupled with several other legal criteria (the specifics of which are not applicable for this article), and it is possible for a bona fide Merchant Cash Advance, (i.e. in compliance with all laws) to exist.

How can Charging Interest Exceeding 100%+ be Legal?

The world of Merchant Cash Advance is one of ambiguity, deceit and "invented" to deliberately extract the maximum amount of interest, fees, commissions and charges possible from small businesses. To qualify one need only show three (3) months of corporate bank statements that reflect some inflow of revenue. That is pretty much the qualification. There are no true underwriting standards or uniform qualification process. Rather do you own a business and does it have enough revenue to pay the lender their usurious interest over a very finite and short period of time? If yes, well done, you qualify.

What about Usury?

How can Merchant Cash Advance lenders charge corporate borrowers what they do? The Courts have held a Merchant Cash Advance (a real MCA) i.e. the purchase of future receivables is not a loan.

Why is an MCA Not a Loan?

In order to be a loan, money must be given and repaid no matter what. With a legal Merchant Cash Advance, Courts hold that the money received by the corporate borrower is not being loaned but is rather money provided today for the rights to a receive a massive chunk of the corporations future receivables. The difference when calculated as an APR will often exceed 100 to 350%. Nevertheless the law in New York says that the true purchase of receivables is a financial structure that the law does not recognize as a loan. Since a bona fide MCA structure is not recognized by the law as a loan, it is not deemed to be a loan and thus not governed by usury and hence the massive amounts of interest / repayment.

Little Nuance – Massive Destruction

This little nuance, has caused the destruction of thousands upon thousands of small American businesses of all kinds. Tragically, Merchant Cash Advances have been solely responsible for the destruction of thousands of businesses across the United States by virtue of the arduous and overbearing repayments demanded on a daily basis, causing many businesses to lose revenue and ultimately their businesses.

With an MCA not a loan, bad acting MCA lenders are afforded a loophole whereby the charging of criminal usury is "permitted," by simply calling the contract an agreement for the purchasing of future receivables, despite their treating the MCA exactly like a conventional loan that is repayable absolutely without contingency.

S.B. 5470 is not a panacea.

What happens when a Merchant cannot keep up with daily or weekly ACH payments? What happens if a Merchant Defaults on a Merchant Cash Advance that lacked the necessary disclosures? What happens if the business is destroyed due to an illegal loan, merely disguised as a receivable purchase?

Will the new law prevent all abuses?

Unlikely. However, it's a massive step in the right direction and the fact that S.B. 5470 specifically names Merchant Cash Advances and Purchase of Future Receivable Agreements in the list of commercial financing structures it governs, is comforting. New York is making progress in its fight against predatory lending and illegal Merchant Cash Advance. First the repeal of a Confession of Judgments (August 31, 2019) and now S.B 5470. This is real progress.

One of the most remarkable components of S.B.5470 is its disclosure requirement of an ANNUAL PERENTAGE RATE ("APR")

Why the New Law?

In 2019, after a massive media depiction of the abuses of Confessions of Judgments by Merchant Cash Advance funders in the State of New York, COJ's were prohibited from being used against a non-New York resident as of August 31st 2019. Notwithstanding these changes, abuses by predatory lenders have continued unabated, thereby forcing the New York State Senate to impose the New TILA-like Disclosure Laws. In a Merchant Cash Advance a merchant borrower must try and decipher fifteen (15) plus pages of fine print that contain complex, ambiguous and possible life changing clauses and conditions, designed to maximize profit and simultaneously hide the actual cost of financing. The new law goes beyond the repeal of Confession of Judgments. The disclosures will be uniform and clear. Hopefully painting a clear

picture for the merchant borrower of how much is being paid, what the APR is, when it is being paid and other vital components making up a Merchant Cash Advance.

S.B.5470 EXPLAINED IN DETAIL

REGULATION:

On December 23rd of 2020, the State of New York enacted and Governor Cuomo signed S.B. 5470 into law. S.B 5470 forces funders and providers of commercial and corporate financing, including Merchant Cash Advance and Factoring Agreements to Disclose Key Terms pertaining to the contemplated financing, and obtain the borrower's signature, before the transaction is consummated. The disclosure requirements applies to all forms of corporate financing, loans and Merchant Cash Advance that are for $500,000.00 or less.

SIMILAR CALIFORNIA LAW:

In 2018, the State of California enacted a very similar disclosure requirement for commercial financing whereby such arrangements require multiple disclosures related to the contemplated financing. It is interesting to note that since enactment, the California version has undergone multiple amendments all in the name of clarification and thus one can expect the same to take place with the New York version.

Please note, while similar, the New York and California TILA-like Disclosure Requirements do differ somewhat.

However, the idea and intent behind both the New York and California law is disclosure! In other words, both States require specific disclosure of certain terms pertaining to the proposed financing and loan provided for by a corporate financier/lender/funder/provider and or purchaser of future receivables. The law clearly governs commercial and corporate financing and does not apply

to consumer or individual loans. The disclosure requirements contained in S.B 5470 mirror some disclosures contained in the Truth in Lending Act (TILA) – a Federal Disclosure Law.

POSSIBLE AMENDMENTS TO THE NEW LAW:

While not stated categorically, the New York Governor did hint at possible changes to the law as written. In a note filed together with the proposed law Governor Cuomo stated that he "secured an agreement with the New York Legislature," to make certain technical changes to the new law in order to "better provide clarity and align to existing requirements under Federal Laws, including the Truth in Lending Act."

No one knows at this time what, if any changes or amendments will be made to the law during the 2021 legislative session. It is important to keep in touch with your legal advisor and Merchant Cash Advance Defense Attorney to determine such changes and what effect they will have on your commercial loans and MCA's.

The new law will formally take effect on the 21st day of June, 2021 and will govern non-exempt "providers" of "commercial financing" forcing them to disclose critical terms related to the contemplated financing transaction and obtain the borrower's signature prior to completing a transaction.

WHO MUST COMPLY UNDER THE NEW LAW?

S.B. 5470 demands that **providers of commercial financing** provide specific disclosures to borrowers at the same time they present an offer of financing. As stated previously, the manner by which to disclose these financing terms and the format to use, is to be arranged and enacted by the New York Department of Financial Services.

WHAT IS COMMERCIAL FINANCING UNDER THE NEW LAW?

Commercial Financing – meaning: open-end financing, closed-end financing, sales-based financing, factoring transaction, or other form of financing, the proceeds of which the recipient does not intend to use primarily for personal, family or household purposes. For purposes of determining whether a financing is a commercial financing, the provider may rely on any statement of intended purposes by the recipient of the financing.

The Statement may be a separate statement signed by the recipient; may be contained in the financing application, financing agreement, or other document signed or consented to by the recipient; or may be provided orally by the recipient so long as it is documented in the recipient's application file by the provider. Electronic signatures and consents are valid for this purpose.

Please note: The provider of financing is not required to determine whether the proceeds of a commercial financing are in fact used in accordance with the recipient's statement of intended purposes.

S.B 5470 further defines "**commercial financing**" to include providers as well as third-party solicitors of:

Sales-Based-Financing – meaning: a financial transaction repaid by the borrower to the provider/lender, over a period of time, where repayment is in the form of a percentage of receivables/revenues and where said repayment amount may decrease or increase based on actual receivables/revenues of the borrower, See N.Y. Financial Services § 801(j). Sales-Based-Financing also includes loan structures where repayment is a fixed amount but includes provision for a reconciliation of the repayment amount, whereby the reconciliation adjusts the payment to a percentage of actual revenue. **Accordingly, S.B 5470 applies to Merchant Cash Advances.**

Factoring Agreements – meaning: a financial transaction tied to the revenues and receivables 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 yet been made, See N.Y. Financial Services § 801(a).

Open-End Commercial Financing – meaning: an agreement for one or more extensions of open-end credit, secured or unsecured, the proceeds of which the recipient does not intend to use primarily for personal, family or household purposes. Open-end financing includes credit extended by a provider under a plan in which: (i) the provider reasonably contemplates repeated transactions; (ii) the provider may impose a finance charge from time to time on an outstanding unpaid balance; and (iii) the amount of credit that may be extended to the recipient during the term of the plan is generally made available to the extent that any outstanding balance is repaid, See N.Y. Financial Services § 801(c).

Closed-End Commercial Financing – meaning*:* a closed-end extension of credit, secured or unsecured, including equipment financing that does not meet the definition of a lease under section 2-A-103 of the uniform commercial code, the proceeds of which the recipient does not intend to use primarily for personal, family or household purposes. Closed-end financing includes financing with an established principal amount and duration. See N.Y Financial Services § 801(d).

Other Forms of Commercial Financing – meaning: any other form of commercial financing as determined by the New York Dept. of Financial Services.

WHO IS A RECIPIENT UNDER THE NEW LAW?

A person who applies for commercial financing and is made a specific offer of commercial financing by a provider. A recipient may also be an authorized representative of the recipient/borrower. Please note, a person acting as a broker cannot be a recipient.

For more details, See N.Y. Financial Services § 801(i) – defining a "recipient" as a "person" and later, See N.Y. Financial Services § 801(g) - defining a "person" as "an individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust or unincorporated organization including, but not limited to, a sole proprietorship"). Accordingly, "Recipient" includes both individuals and Corporations.

WHO IS A PROVIDER UNDER THE NEW DISCLOSURE LAW?

As one can see, S.B. 5470 defines "Commercial Financing" broadly and INCLUDES PURCHASES OF FUTURE ACCOUNT RECEIVABLES as well as factoring arrangements.

Accordingly, despite several of the required disclosures being difficult to apply to a typical Merchant Cash Advance (to be discussed further in this article), the fact remains that **S.B. 5470 applies to a Merchant Cash Advance** and thus, an MCA that is for $500,000.00 or less, will require the disclosures, pursuant to the newly passed law.

WHO DOES THE NEW LAW TARGET?

S.B. 5470 applies broadly to entities that "extend" specific offers of commercial financing or that "solicit and present" specific offers of commercial financing on behalf of a third party. This language indicates a clear intention on the part of New York law makers to include Merchant Cash Advance Companies Merchant Cash Advance Lenders, Merchant Cash Advance Providers as well as Lending Platforms, Peer to Peer Lending Platforms as well as other forms of Marketplace Loans.

Interestingly the law counts Bank Strategic Partnerships within its reach. This means that the New York - Truth in Lending-like newly passed Disclosure Law applies to Merchant Cash Advance Companies that partner with Federally Chartered Banks. For example: Merchant Cash Advance Lender X partners up with Bank Y to offer loans and MCA's to small businesses across the United

States. X has the clientele and Y has the capital. No matter. Both Merchant Cash Provider/Funder X and Bank Y are within the ambit of the new Disclosure Law alike.

Notwithstanding this, S.B. 5470 does not seek to stifle or prevent such arrangements, rather the Statute takes the time to express its support for the notion of a so-called "True Lender." Meaning, if Bank Y is a True Bank Lender and also has a relationship with a Merchant Cash Advance Funder, the mere relationship or the mere fact that their relationship engages in transactions that likely fall within the scope of the Statute, requiring disclosures, does not therefore mean that the bank or its Merchant Cash Advance strategic partner are necessarily providing commercial financing.

More specifically it states; "For the avoidance of doubt, the extension of a specific offer or provision of disclosures for a commercial financing, in and of itself, shall not be construed to mean that a provider is originating, making, funding or providing commercial financing."

Fintech companies are also within the scope of the new Financial Disclosure Law. A good rule of thumb is to ask whether the institution and or the commercial financing transaction contemplated, or both, are somehow exempt from the new Statute. Unless the Lender, Bank, MCA Funder, MCA Provider, MCA Platform and or Fintech Company is exempt from providing the borrowing Merchant certain disclosures, pursuant to the new law (to be discussed further in this article), the entity and contemplated transaction are governed by the new law and those entities must comply by providing the necessary and required disclosures. For further detail, see N.Y. Financial Services § 801(h) – defining a "provider" to be "a person who extends a specific offer of commercial financing to a recipient.

Important: Unless an exemption exists, "provider" also includes "a person who solicits and presents specific offers of commercial financing on behalf of a third party."

COMMERCIAL MORTGAGES ARE EXEMPT:

S.B. 5470 exempts Commercial Mortgage Loans. The statute does not impose new interest charging caps or pre-lending licensing obligations on Commercial Mortgage Lenders. Take Note: New York State Law does include the requirement to obtain formal licensing in order to provide certain commercial loans. This is discussed in what is known as NY's Licensed Lender Law. Unfortunately though, the requirement applies to lenders issuing loans of $50,000 or less.

DISCLOSURE AND SIGNATURE REQUIREMENTS (THE CORE LAW)

1) Lenders and providers of commercial financing governed by S.B. 5470 as analyzed above, will be required to disclose the following:
2) The total amount of commercial financing (or total amount of available credit) and, if different, the disbursement amount;
3) The finance charge;
4) The Annual Percentage Rate (APR), calculated using TILA and Regulation Z;
5) The total repayment amount;
6) The term of the financing;
7) The amounts and frequency of payments;
8) A description of all other potential fees and charges;
9) A description of any prepayment charges; and
10) A description of any collateral requirements or security interests.

Take Note: **Additional forms of disclosures exist for Merchant Cash Advance, Factoring and other forms of lending predicated upon the sale of future revenue and receivables**.

MERCHANT CASH ADVANCE - RENEWALS

Disclosure for a Loan Renewal: Providers and lenders requiring borrowers to pay off an existing commercial loan/commercial financing structure as a pre-condition to renewal, must disclose

1) The amount of new financing applied to prepayment charges or interest under the financing being renewed and
2) The dollar amount by which the new disbursement will be reduced to pay down any unpaid portion of the outstanding balance.

This will apply to Merchant Cash Advance Consolidations too, including Reverse Consolidations as well as to a general renewal of an existing Merchant Cash Advance Positions.

APR OF A MERCHANT CASH ADVANCE?

The new disclosure law requires an APR or Annual Percentage Rate to be provided with each loan, pursuant to the statute.

HOW CAN AN MCA DISCLOSE AN APR?

Since a bona fide Merchant Cash Advance is not permitted to designate a definite deadline for repayment because the transaction, if done legitimately, is supposed to be premised solely on **possible and potential** future receivables, no one knows of the time it will take to make the receivables to be provided to the lender. No one knows what will happen in the future and receivables may not even exist moving forward, a repayment timeline or deadline does not exist in a legal bona fide MCA and this begs the obvious question:

HOW TO CALCULATE AN MCA APR?

New York law makers seem aware of the potential issue raised above and have stated that a Merchant Cash Advance and other agreements to purchase future receivables or revenues, **will require different or substitute disclosures**.

The devil is in the details and those details may only be revealed post-enactment and probably will be tweaked on a preliminary case basis. Coupled with the pending issuance of guidance provided for by the Department of Financial Services in New York and it will be remarkably interesting to see how the Merchant Cash Advance and Purchase of Future Receivables space discloses its APR.

THE MILLION DOLLAR QUESTION:

What exactly the "differing and or substitute" disclosures are and how they will be inculcated into the overall law, is still up in the air. Will it provide a mechanism by which a Merchant Cash can actually calculate and reveal its true APR? Only time will tell. The mere fact that the law demands it, makes this all the more remarkable! Watch this space..

EXEMPT ENTITIES OF NOTE:

Exempt entities include state or federally chartered institutions like banks and saving and loan companies.

EXEMPT LENDER / PROVIDERS OF NOTE:

An exemption also exists for a person or provider that facilitates/provides no more than five (5) commercial lending transactions within the State of New York, over the course of twelve (12) months.

EXEMPT TRANSACTIONS OF NOTE:

S.B. 5470 does not apply to lending transactions

1. Secured by real property,

2. Leases (See Article 2A - New York UCC) and

3. Individual loan transactions that exceed $500,000.00

EXPECTATIONS

S.B. 5470 will go into effect on January 1st, 2022. All non-exempt entities must be in compliance with the law's disclosure and signature requirements at this time. As for Merchant Cash Advance and Purchase of Future Receivable agreements, we believe the New York Department of Financial Services will issue the Disclosure format and guidance before June 21st.

Alternatively and if necessary, the law makers may need to amend or enact additional laws as necessary to effectuate compliance with S.B 5470 – INCLUDING Merchant Cash Advance and Revenue based Sales agreement. The worst outcome will be a delay in enacting the law for a lack of guidance on format and application.

S.B 5470 - THE RIGHT DIRECTION:

In conclusion, this writer believes the New York Law is a massive step in the right direction towards regulating Merchant Cash Advances and the Purchase of Future Receivables and although questions remain as to practical application and format, the possible benefits of S.B 5470 far outweigh any lingering questions. Practical compliance will come and players will adapt or fail.

The winner here is the small business owner. America's small business community will be enabled with uniform data and parameters that creates transparency and a fair market place while

simultaneously holding non-compliant lenders accountable and even providing recourse to commercial borrowers via the regulatory and enforcement powers of the New York DFS.

As for the current marketplace, we expect it to self-correct as each respective lender decides to adapt to the new law. We see the law's enactment and the speed at which it passed, as the beginning of a trend and expect additional States around the country to enact similar legislation to New York's S.B 5470. Credible lenders will likely welcome the opportunity too as a means to separating the good actors from the bad.

Bottom line: S.B.5470 is here and it's real.

Compliance will be expected.

Be sure *your* Merchant Cash Advance is legal and in compliance.

CONTACT THE AUTHOR:

If you have any questions related to this article, kindly contact the author Mr. Grant Phillips, Managing Partner at Grant Phillips Law, PLLC, a New York City law firm specializing in representing Merchants struggling with Merchant Cash Advance.

Grant can be reached at grant@grantphillipslaw.com or at 516.670.5165. Please visit our website at www.grantphillipslaw.com for additional resources and information.

Grant Phillips Law, PLLC is a Merchant Cash Advance law firm based out of New York City with clients from across the United States.

We represent Merchants struggling with an MCA.

www.grantphillipslaw.com

516.670.5165

Disclaimer: The article and your reading of it, is for informational purposes only and no attorney client relationship exists by it and nothing contained within this article is intended or should be construed as or relied upon as legal advice.

GRANT PHILLIPS LAW, PLLC

516.670.5165

670 Long Beach Blvd

Long Beach, NY 11561

www.grantphillipslaw.com