
OLR Bill Analysis

sSB 272

AN ACT REQUIRING CERTAIN FINANCING DISCLOSURES.

SUMMARY

This bill requires certain lenders to disclose specific information on commercial financing transactions of \$500,000 or less that they offer and provide, excluding property mortgages. Under the bill, “commercial financing” is any financing that is not primarily intended for personal, family, or household purposes and includes five types: (1) open-end financing, (2) closed-end financing, (3) sales-based financing, (4) factoring transactions, and (5) any other form of commercial financing.

The exact information that must be disclosed varies across the five types of commercial financing, but generally lenders must provide applicants the financing amount, finance charges, the annual percentage rate, the total repayment amount, the term, payment amounts, other potential fees, any prepayment costs, and a description of any collateral requirements, among other things.

Violations of the bill’s provisions are subject to a civil penalty of up to \$2,000 for each violation and up to \$10,000 for each willful violation. The DOB commissioner may order additional relief if he finds that a provider has knowingly violated these laws.

EFFECTIVE DATE: October 1, 2022

§§ 1 & 2 — AFFECTED PROVIDERS AND FINANCING OFFERS

The bill imposes its disclosure requirements on “providers,” who are defined as any “person” (i.e., a natural person or business entity) who extends a specific offer of commercial financing to a “recipient” (i.e., anyone other than a broker who applies for commercial financing). A “specific offer” is the specific terms of commercial financing, including price or amount, that is quoted to a recipient based on information

obtained from or about the recipient, which, if accepted, will generally be binding on the provider.

Under the bill, a “provider” includes anyone soliciting or presenting specific offers of commercial financing on behalf of a third party. It excludes any:

1. financial institution or their affiliates;
2. lender regulated under the federal Farm Credit Act (12 U.S.C. § 2001, et seq.);
3. commercial financing transaction secured by real property;
4. lease under the Uniform Commercial Code (CGS § 42a-2A-102);
5. person or provider who makes no more than five commercial financing transactions in Connecticut in a 12-month period;
6. individual commercial financing transactions over \$500,000; and
7. person acting as a technology service provider for an exempt entity’s commercial financing program so long as he or she does not have an interest, arrangement, or agreement to purchase an interest in the entity’s program.

“Financial institutions” excluded from the bill’s requirements include the following entities authorized to transact business in Connecticut: (1) federally or state-licensed, certified, or chartered banks, trust companies, and industrial loan companies; (2) federally chartered savings and loan associations, federal savings banks, and federal credit unions; and (3) state organized savings and loan associations, savings banks, and credit unions.

In order to determine if a financing is a commercial financing (i.e., not primarily intended for personal, family, or household purposes), the bill allows providers to rely on a recipient’s statement of intended purposes. Such a statement may be (1) separate statement signed by the recipient; (2) contained in the financing application, financing agreement, or other

document signed or consented to by the recipient; (3) provided orally by the recipient so long as it is documented in the recipient's application file by the provider; or (4) given electronically. Providers are not required to learn whether the recipients used proceeds in line with their statements.

§§ 1 & 3-6 — DISCLOSURES BY FINANCING TYPE

The bill requires providers, when extending a specific offer for four types of commercial financing (open-end financing, closed-end financing, sales-based financing, and factoring transactions), to give recipients certain disclosures in formats prescribed by the Department of Banking (DOB) commissioner. These disclosures vary across the four types of commercial financing, but are the same or similar in some cases.

Disclosures Across Multiple Commercial Financing Types (§§ 3-6)

For instance, they all require the disclosure of a "finance charge," which is the cost of financing as a dollar amount, including (1) any direct or indirect charge payable by the recipient and directly or indirectly imposed by the provider; (2) all charges included under the federal Truth in Lending Act's (TILA's) Regulation Z's definition of finance charge (12 C.F.R. Part 1026.4); and (3) any charges as determined by the DOB commissioner.

Additionally, for all four types of commercial financing, a provider must disclose:

1. a description of collateral requirements or security interests, if any; and
2. if the commercial financing agreement includes a waiver of the recipient's right for a hearing concerning the attachment of the recipient's bank account, a clear and conspicuous disclosure that the recipient has a right to the hearing if the provider pursues the attachment and the waiver may result in the attachment of the recipient's bank account without a hearing.

Disclosures Unique to Sales-Based Financing (§§ 1 & 3)

"Sales-based financing" is a transaction that is repaid by the recipient

to the provider over time as (1) a percentage of sales or revenue, in which the payment amount may increase or decrease according to the recipient's sales or revenue or (2) according to a mechanism where the financing is repaid as a fixed payment but provides for a reconciliation process that adjusts the payment to an amount that is a percentage of sales or revenue.

For sales-based financing, a provider must disclose:

1. the total amount of the commercial financing, and the disbursement amount, if different from the financing amount, after any fees deducted or withheld at disbursement;
2. the finance charge;
3. the estimated annual percentage rate (using the words annual percentage rate or the abbreviation "APR") expressed as a yearly rate, including any fees and finance charges, and calculated in accordance with federal regulations under TILA (12 C.F.R. 1026.22), based on the estimated term of repayment and projected periodic payment amounts calculated based on the recipient's projected sales (see below);
4. the total repayment amount (i.e., disbursement amount plus finance charge);
5. the estimated term, which is the period of time required for the periodic payments to equal the total to be repaid based on the projected sales volume;
6. the payment amounts, based on projected sales volumes, as well as (a) if payments are fixed, their frequency and, if other than monthly, the amount of the average projected payments per month; or (b) if payments are variable, a payment schedule or description of the method used to calculate the amounts and frequency of payments and the amount of average projected payments per month;
7. a description of all other potential fees and charges not included

in the finance charge, including draw fees, late payments fees, and returned payment fees; and

8. if the recipient elects to pay off or refinance prior to full repayment, the provider must disclose (a) whether the recipient will be required to pay any finance charges other than interest accrued since the recipient's last payment, and, if so, the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient may be required to pay, and (b) whether the recipient will be required to pay additional fees not already included in the finance charge (It is unclear whether this entire provision functions as a disclosure statement that must be given when a specific offer is extended or if its introductory language changes the timing, so that the disclosure does not need to be given until a recipient elects to pay off or refinance before full repayment.).

The bill allows the projected sales volume to be calculated using the historical method or the opt-in method. It requires each provider to give notice to the DOB commissioner about which method the provider intends to use to calculate estimated annual percentage rates for sales-based financing offerings.

Under the historical method, a provider must use an average historical sales volume or revenue to determine the financing's payment amounts and the estimated APR. The provider must fix the historical time period used to calculate the average historical volume and use that period for all disclosure purposes for all sales-based financing products offered. The fixed historical time period must (1) be at least one month and no more than 12 months and (2) either be the preceding time period from the specific offer or, alternatively, the average sales for the same number of months with the highest sales volume within the past 12 months.

Under the opt-in method, the provider must determine the estimated APR, the estimated term, and the projected payments using a projected sales volume that the provider elects for each disclosure.

Providers choosing this method must participate in a review process prescribed by the DOB commissioner. Beginning October 1, 2023, they must annually report data to the DOB commissioner on estimated APRs disclosed to recipients and actual retrospective APRs of completed transactions. The report must contain information that the DOB commissioner may prescribe as necessary or appropriate to determine whether the deviation between the estimated APR and actual retrospective APRs of completed transactions was reasonable. The DOB commissioner must establish the reporting method and may, upon a finding that the use of projected sales volume by the provider has resulted in an unacceptable deviation between estimated and actual APR, require the provider to use the historical method. As part of making this finding, the DOB commissioner may consider unusual and extraordinary circumstances impacting the provider's deviation between estimated and actual APR.

Disclosures Unique to Closed-End Financing (§ 1 & 4)

“Closed-end financing” is a closed-end extension of secured or unsecured credit, including financing with an established principal amount and duration, and equipment financing that does not meet the definition of a lease under the Uniform Commercial Code (CGS § 42a-2A-102).

For closed-end financing, a provider must disclose:

1. the total amount of the commercial financing and the disbursement amount, if different from the financing amount, after any fees are deducted or withheld;
2. the finance charge;
3. the APR, using the words “annual percentage rate” or the “APR” abbreviation, expressed as a yearly rate inclusive of fees and finance charges that cannot be avoided by a recipient, and calculated in accordance with federal regulations under TILA (12 C.F.R. 1026.22);
4. the total repayment amount (i.e., the disbursement amount plus

the finance charge);

5. the term of the financing;
6. the payment amounts and (a) if fixed, the frequency and, if the term is longer than one month, the average monthly payment amount; or (b) if variable, a full payment schedule or a description of the method used to calculate the amounts and frequency of payments and, if the term is longer than one month, the estimated average monthly payment amount;
7. a description of all other potential fees and charges that can be avoided by the recipient, including late payment fees and returned payment fees; and
8. if the recipient elects to pay off or refinance prior to full repayment, the provider will disclose whether the recipient will be required to pay (a) any finance charges other than interest accrued since the recipient's last payment, and, if so, the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient may be required to pay, and (b) any additional fees not included in the finance charge (It is unclear whether this entire provision functions as a disclosure statement that must be given when a specific offer is extended or if its introductory language changes the timing, so that the disclosure does not need to be given until a recipient elects to pay off or refinance before full repayment.).

Disclosures Unique to Open-End Financing (§§ 1 & 5)

“Open-end financing” is an agreement for one or more extensions of secured or unsecured open-end credit, including 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 from time to time on an outstanding unpaid balance; and (3) the amount of credit the provider may extend to the recipient during the plan's term, up to any limit set by the provider, is generally made available to the extent that any outstanding balance is repaid.

For open-end financing, a provider must disclose:

1. the maximum amount of credit available to, and the amount scheduled to be drawn by, the recipient at the time the offer is extended, if any, less any fees deducted or withheld at disbursement;
2. the finance charge, which must assume the maximum amount of credit available is drawn and held for the duration of the term or draw period;
3. the APR, using the words “annual percentage rate” or the “APR” abbreviation, expressed as a nominal yearly rate, including fees and finance charges that cannot be avoided, calculated in accordance with federal regulations under TILA (12 C.F.R. 1026.22) and based on the maximum amount of credit available and the term resulting from making the minimum required payments for the term as disclosed;
4. the total repayment amount (i.e., the draw amount less any fees deducted or withheld at disbursement plus the finance charge), which must assume the maximum draw amount held for the duration of the term or period;
5. the term of the plan or the period over which a draw is amortized;
6. the payment frequency and amounts, based on the assumptions used for calculating the APR, including a description of payment amount requirements (e.g., minimum payment amount) and (a) if payment frequency is other than monthly, the amount of the average projected monthly payments per month, or (b) if the payment amount is variable, the payment schedule or description of the method used to calculate the amounts and frequency of payments and the estimated average monthly payment amount;
7. a description of all other potential fees and charges that can be avoided by the recipient, including draw fees, late payment fees

and returned payment fees; and

8. if the recipient elects to pay off or refinance prior to full repayment, the provider will disclose whether the recipient will be required to pay (a) any finance charges other than interest accrued since the recipient's last payment, and, if so, the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient may be required to pay, and (b) any additional fees not included in the finance charge (It is unclear whether this entire provision functions as a disclosure statement that must be given when a specific offer is extended or if its introductory language changes the timing, so that the disclosure does not need to be given until a recipient elects to pay off or refinance before full repayment.).

Disclosures Unique to Factoring Transaction (§§ 1 & 6)

“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 yet been made.

For a factoring transaction, a provider must disclose:

1. the amount of the receivables purchase price paid to the recipient and, if different from the purchase price, the amount disbursed to the recipient after any fees are deducted or withheld at disbursement;
2. the finance charge, which must include the discount taken on the face value of the accounts receivable;
3. the estimated annual percentage rate, using that term, calculated as a single advance, single payment transaction in accordance with federal regulations under TILA (12 C.F.R. 1026 Appendix J) in which the (a) purchase amount is the financing amount, (b) purchase amount less the finance charge is the payment amount, and (c) term is established by the payment due date of the

receivables or the average payment period using the provider's historical data over a period up to the previous 12 months concerning payment invoices paid by the party owing the accounts receivable;

4. the total payment amount (i.e., the purchase amount plus the finance charge);
5. a description of all other potential fees and charges that may be avoided by the recipient; and
6. a description of the receivables purchased.

§ 7 — DISCLOSURES FOR OTHER COMMERCIAL FINANCING

For other commercial financing that is not open-end financing, closed-end financing, sales-based financing, or a factoring transaction, the DOB commissioner may require a provider, when extending a specific offer, to give recipients the following disclosures in the format he prescribes:

1. the total amount of the commercial financing and disbursement amount if different from the financing amount after any fees deducted or withheld at disbursement;
2. the finance charge;
3. the APR, using the words "annual percentage rate" or the "APR" abbreviation, expressed as a yearly rate inclusive of fees and finance charges and calculated in accordance with the relevant sections of federal regulations under TILA (12 C.F.R. 1026.22) or the bill's provisions;
4. the total repayment amount (i.e., the disbursement amount plus the finance charge);
5. the term of the financing;
6. the payment amounts and (a) if payment amounts are fixed, the frequency along with the average monthly payment amount or

- (b) if payment amounts are variable, a payment schedule or description of the methods used to calculate the amounts and frequency of payments, along with an estimated average monthly payment amount;
7. a description of all other potential fees and charges that can be avoided by the recipient, including late payment fees and returned payment fees; and
 8. if the recipient elects to pay off or refinance prior to full repayment, the provider will disclose whether the recipient will be required to pay (a) any finance charges other than interest accrued since the recipient's last payment, and, if so, the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient may be required to pay, and (b) any additional fees not included in the finance charge (It is unclear whether this entire provision functions as a disclosure statement that must be given when a specific offer is extended or if its introductory language changes the timing, so that the disclosure does not need to be given until a recipient elects to pay off or refinance before full repayment.).

§ 8 — ADDITIONAL DISCLOSURES FOR RENEWAL FINANCING

If a provider requires a recipient to pay off the balance of an existing commercial financing before obtaining additional financing from the provider, then the bill requires the provider to make certain additional disclosures.

Specifically, the provider must disclose the amount of the new financing used to pay off the part of the existing financing that are (1) prepayment charges and (2) unpaid interest expenses that were not forgiven at the time of renewal. For financing involving a fixed repayment amount, the prepayment charge equals the original finance charge multiplied by the amount of the renewal used to pay off existing financing as a percentage of the total repayment amount less any portion of the total repayment amount forgiven by the provider at the time of prepayment. If this amount is more than zero, this amount must

be included in the disclosure as the answer to the following question and presented as follows: “Does the renewal financing include any amount that is used to pay unpaid finance charge or fees, also known as double dipping? Yes, (enter amount). If the amount is zero, the answer would be No.”

If the disbursement amount will be reduced to pay down any unpaid portion of the outstanding balance, the provider must disclose the actual dollar amount that the disbursement will be reduced by.

§ 9 — DISCLOSURE SIGNATURE REQUIREMENT

The bill requires each provider to obtain a recipient’s signature on all the above disclosures before authorizing the recipient to proceed further with the commercial financing transaction application. The bill allows for electronic signatures.

§ 10 — DISCLOSING ADDITIONAL INFORMATION

Under the bill, providers may provide or disclose additional information on their commercial financing, so long as it is not included as part of the above required disclosures. The bill prohibits providing other information on financing costs during the application process as a rate unless it is the annual interest rate or the APR. It further requires that the term interest, when used to describe a percentage rate, must only be used to describe annualized percentage rates, such as the annual interest rate. Additionally, when a provider states a rate of finance charge or a financing amount to a recipient during an application process, the provider must also state the rate as an annual percentage rate, using that term or the abbreviation “APR.”

§ 11 — ACCEPTING DISCLOSURES FROM OTHER STATES

The bill permits the DOB commissioner to allow the use of another state’s commercial financing disclosure form for complying with the bill’s disclosure requirements if he determines that the laws in the other state meet or exceed the bill’s requirements.

§ 12 — DOB REGULATIONS

The bill allows the DOB commissioner to adopt regulations to carry

out the bill's provisions.

§ 13 — PENALTIES

If a provider violates the bill's provisions or any related regulation adopted by the DOB commissioner, the bill subjects the provider to a civil penalty up to \$2,000 for each violation and up to \$10,000 for each wilful violation. In addition to those penalties, if the DOB commissioner finds that a provider has knowingly violated these laws, he may order additional relief, including a permanent or preliminary injunction on behalf of any recipient affected by the violation.

COMMITTEE ACTION

Banking Committee

Joint Favorable Substitute

Yea 13 Nay 4 (03/15/2022)