



Senate

General Assembly

File No. 150

February Session, 2022

Substitute Senate Bill No. 272

Senate, March 28, 2022

The Committee on Banking reported through SEN. MILLER of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT REQUIRING CERTAIN FINANCING DISCLOSURES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2022*) As used in this section, and
2 sections 2 to 13, inclusive, of this act:

3 (1) "Closed-end financing" means a closed-end extension of credit,
4 secured or unsecured, including financing with an established principal
5 amount and duration, and equipment financing that is not considered a
6 lease, as defined in section 42a-2A-102 of the general statutes, the
7 proceeds of which the recipient does not intend to use primarily for
8 personal, family or household purposes;

9 (2) "Commercial financing" means open-end financing, closed-end
10 financing, sales-based financing, factoring transaction or any other form
11 of financing, the proceeds of which the recipient does not intend to use
12 primarily for personal, family or household purposes;

13 (3) "Factoring transaction" means an accounts receivable purchase

14 transaction that includes an agreement to purchase, transfer or sell a
15 legally enforceable claim for payment held by a recipient for goods the
16 recipient has supplied or services the recipient has rendered that have
17 been ordered but for which payment has not yet been made;

18 (4) "Finance charge" means the cost of financing as a dollar amount,
19 including (A) any charge payable directly or indirectly by the recipient
20 and imposed directly or indirectly by the provider as an incident to or a
21 condition of the extension of financing, (B) all charges that would be
22 included under the definition of "finance charge" in 12 CFR Part 1026.4,
23 as amended from time to time, as if the transaction were subject to said
24 section, and (C) any charges as determined by the Banking
25 Commissioner;

26 (5) "Financial institution" means any of the following: (A) A bank,
27 trust company or industrial loan company doing business under the
28 authority of, or in accordance with, a license, certificate or charter issued
29 by the United States, this state or any other state, district, territory or
30 commonwealth of the United States that is authorized to transact
31 business in this state; (B) a federally chartered savings and loan
32 association, federal savings bank or federal credit union that is
33 authorized to transact business in this state; or (C) a savings and loan
34 association, savings bank or credit union organized under the laws of
35 this or any other state that is authorized to transact business in this state;

36 (6) "Open-end financing" means an agreement for one or more
37 extensions of open-end credit, secured or unsecured, the proceeds of
38 which the recipient does not intend to use primarily for personal, family
39 or household purposes, and includes credit extended by a provider
40 under a plan in which: (A) The provider reasonably contemplates
41 repeated transactions; (B) the provider may impose a finance charge
42 from time to time on an outstanding unpaid balance; and (C) the amount
43 of credit that may be extended to the recipient during the term of the
44 plan up to any limit set by the provider is generally made available to
45 the extent that any outstanding balance is repaid;

46 (7) "Person" means an individual, corporation, partnership, limited

47 liability company, joint venture, association, joint stock company, trust
48 or unincorporated organization, including, but not limited to, a sole
49 proprietorship;

50 (8) "Provider" means a person who extends a specific offer of
51 commercial financing to a recipient and includes, unless otherwise
52 exempt, a person who solicits and presents specific offers of commercial
53 financing on behalf of a third party, but does not include any: (A)
54 Financial institution or affiliate of a financial institution; (B) person
55 acting in such person's capacity as a technology services provider to an
56 entity exempt under this section for use as part of the exempt entity's
57 commercial financing program, provided such person has no interest,
58 arrangement or agreement to purchase any interest in the commercial
59 financing extended by the exempt entity in connection with such
60 program; (C) lender regulated under the federal Farm Credit Act, 12
61 USC 2001 et seq.; (D) commercial financing transaction secured by real
62 property; (E) lease as defined in section 42a-2A-102 of the general
63 statutes; (F) person or provider who makes no more than five
64 commercial financing transactions in this state in a twelve-month
65 period; or (G) individual commercial financing transaction in an amount
66 over five hundred thousand dollars;

67 (9) "Recipient" means a person, or the authorized representative of a
68 person, who applies for commercial financing and is made a specific
69 offer of commercial financing by a provider, but does not include a
70 person who is acting as a broker;

71 (10) "Sales-based financing" means a transaction that is repaid by the
72 recipient to the provider over time as (A) a percentage of sales or
73 revenue, in which the payment amount may increase or decrease
74 according to the volume of sales made or revenue received by the
75 recipient, or (B) according to a fixed payment mechanism that provides
76 for a reconciliation process that adjusts the payment to an amount that
77 is a percentage of sales or revenue; and

78 (11) "Specific offer" means the specific terms of commercial financing,
79 including price or amount, that is quoted to a recipient based on

80 information obtained from or about the recipient, which, if accepted by
81 a recipient, shall be binding on the provider, as applicable, subject to
82 any specific requirements stated in such terms.

83 Sec. 2. (NEW) (*Effective October 1, 2022*) For purposes of determining
84 whether a financing is a commercial financing, the provider may rely on
85 any statement of intended purposes by the recipient. The statement may
86 be (1) a separate statement signed by the recipient; (2) contained in the
87 financing application, financing agreement or other document signed or
88 consented to by the recipient; or (3) provided orally by the recipient so
89 long as it is documented in the recipient's application file by the
90 provider. Electronic signatures and consents are valid for purposes of
91 this section. The provider shall not be required to ascertain that the
92 proceeds of a commercial financing are used in accordance with the
93 recipient's statement of intended purposes.

94 Sec. 3. (NEW) (*Effective October 1, 2022*) A provider shall provide to a
95 recipient at the time of extending a specific offer for sales-based
96 financing the following disclosures in a format prescribed by the
97 Banking Commissioner:

98 (1) The total amount of the commercial financing and the
99 disbursement amount, if different from the financing amount, after any
100 fees are deducted or withheld at disbursement;

101 (2) The finance charge;

102 (3) The estimated annual percentage rate, using the words annual
103 percentage rate or the abbreviation "APR", expressed as a yearly rate,
104 inclusive of any fees and finance charges, and calculated in accordance
105 with the federal Truth in Lending Act, Regulation Z, 12 CFR 1026.22, as
106 amended from time to time, based on the estimated term of repayment
107 and the projected periodic payment amounts. The estimated term of
108 repayment and the projected periodic payment amounts shall be
109 calculated based on the projection of the recipient's sales. The projected
110 sales volume may be calculated using the historical method or the opt-
111 in method as described in subparagraphs (A) and (B) of this subdivision.

112 The provider shall provide notice to the Banking Commissioner of
113 which method the provider intends to use in all instances of sales-based
114 financing offered in calculating estimated annual percentage rate
115 pursuant to this section;

116 (A) A provider using the historical method shall use an average
117 historical volume of sales or revenue by which the financing's payment
118 amounts are based and the estimated annual percentage rate is
119 calculated. The provider shall fix the historical time period used to
120 calculate the average historical volume and use such period for all
121 disclosure purposes for all sales-based financing products offered. The
122 fixed historical time period shall either be the preceding time period
123 from the specific offer or, alternatively, the provider may use average
124 sales for the same number of months with the highest sales volume
125 within the past twelve months. The fixed historical time period shall be
126 not less than one month and shall not exceed twelve months; and

127 (B) A provider using the opt-in method shall determine the estimated
128 annual percentage rate, the estimated term and the projected payments
129 using a projected sales volume that the provider elects for each
130 disclosure, provided such provider participates in a review process
131 prescribed by the commissioner. A provider shall, not later than October
132 1, 2023, and annually thereafter, report data to the commissioner of
133 estimated annual percentage rates disclosed to recipients and actual
134 retrospective annual percentage rates of completed transactions. The
135 report shall contain such information as the commissioner may
136 prescribe as necessary or appropriate for the purpose of making a
137 determination of whether the deviation between the estimated annual
138 percentage rate and actual retrospective annual percentage rates of
139 completed transactions was reasonable. The commissioner shall
140 establish the method of reporting and may, upon a finding that the use
141 of projected sales volume by the provider has resulted in an
142 unacceptable deviation between estimated and actual annual
143 percentage rate, require the provider to use the historical method. The
144 commissioner may consider unusual and extraordinary circumstances
145 impacting the provider's deviation between estimated and actual

146 annual percentage rate in the determination of such finding;

147 (4) The total repayment amount, which is the disbursement amount
148 plus the finance charge;

149 (5) The estimated time period required for the periodic payments to
150 equal the total amount required to be repaid based on the projected sales
151 volume;

152 (6) The payment amounts, based on the projected sales volume as
153 follows: (A) For payment amounts that are fixed, the payment amounts
154 and frequency, and, if the payment frequency is other than monthly, the
155 amount of the average projected payments per month; or (B) for
156 payment amounts that are variable, a payment schedule or a description
157 of the method used to calculate the amounts and frequency of payments,
158 and the amount of the average projected payments per month;

159 (7) A description of all other potential fees and charges not included
160 in the finance charge, including, but not limited to, draw fees, late
161 payment fees and returned payment fees;

162 (8) If the recipient elects to pay off or refinance the commercial
163 financing prior to full repayment, the provider shall disclose: (A)
164 Whether the recipient will be required to pay any finance charges other
165 than interest accrued since the recipient's last payment and, if so, the
166 percentage of any unpaid portion of the finance charge and the
167 maximum dollar amount the recipient may be required to pay; and (B)
168 whether the recipient will be required to pay any additional fees not
169 already included in the finance charge;

170 (9) A description of collateral requirements or security interests, if
171 any; and

172 (10) If the commercial financing agreement includes a waiver of the
173 recipient's right for a hearing concerning the attachment of the
174 recipient's bank account, a clear and conspicuous disclosure that: (A)
175 The recipient has a right to such a hearing if the provider pursues such
176 attachment, and (B) such waiver may result in the attachment of the

177 recipient's bank account without a hearing.

178 Sec. 4. (NEW) (*Effective October 1, 2022*) A provider shall provide to a
179 recipient at the time of extending a specific offer for closed-end
180 financing the following disclosures in a format prescribed by the
181 Banking Commissioner:

182 (1) The total amount of the commercial financing and the
183 disbursement amount, if different from the financing amount, after any
184 fees are deducted or withheld at disbursement;

185 (2) The finance charge;

186 (3) The annual percentage rate, using only the words "annual
187 percentage rate" or the abbreviation "APR", expressed as a yearly rate,
188 inclusive of any fees and finance charges that cannot be avoided by a
189 recipient, and calculated in accordance with the federal Truth in
190 Lending Act, Regulation Z, 12 CFR 1026.22, as amended from time to
191 time;

192 (4) The total repayment amount, which is the disbursement amount
193 plus the finance charge;

194 (5) The term of the financing;

195 (6) The payment amounts as follows: (A) For payment amounts that
196 are fixed, the payment amounts and frequency, and, if the term is longer
197 than one month, the average monthly payment amount; or (B) for
198 payment amounts that are variable, a full payment schedule or a
199 description of the method used to calculate the amounts and frequency
200 of payments, and, if the term is longer than one month, the estimated
201 average monthly payment amount;

202 (7) A description of all other potential fees and charges that can be
203 avoided by the recipient, including, but not limited to, late payment fees
204 and returned payment fees;

205 (8) If the recipient elects to pay off or refinance the commercial

206 financing prior to full repayment, the provider shall disclose whether
207 the recipient would be required to pay: (A) Any finance charges other
208 than interest accrued since the recipient's last payment and, if so,
209 disclosure of the percentage of any unpaid portion of the finance charge
210 and maximum dollar amount the recipient may be required to pay; and
211 (B) any additional fees not included in the finance charge;

212 (9) A description of collateral requirements or security interests, if
213 any; and

214 (10) If the commercial financing agreement includes a waiver of the
215 recipient's right for a hearing concerning the attachment of the
216 recipient's bank account, a clear and conspicuous disclosure that: (A)
217 The recipient has a right to such a hearing if the provider pursues such
218 attachment; and (B) such waiver may result in the attachment of the
219 recipient's bank account without a hearing.

220 Sec. 5. (NEW) (*Effective October 1, 2022*) A provider shall provide to a
221 recipient at the time of extending a specific offer for open-end financing
222 the following disclosures in a format prescribed by the Banking
223 Commissioner:

224 (1) The maximum amount of credit available to the recipient and the
225 amount scheduled to be drawn by the recipient at the time the offer is
226 extended, if any, minus any fees deducted or withheld at disbursement;

227 (2) The finance charge, which, for the purposes of open-end
228 financing, shall assume the maximum amount of credit available to the
229 recipient, in each case, is drawn and held for the duration of the term or
230 draw period;

231 (3) The annual percentage rate, using only the words "annual
232 percentage rate" or the abbreviation "APR", expressed as a nominal
233 yearly rate, inclusive of any fees and finance charges that cannot be
234 avoided by a recipient, and calculated in accordance with the federal
235 Truth in Lending Act, Regulation Z, 12 CFR 1026.22 and based on the
236 maximum amount of credit available to the recipient and the term

237 resulting from making the minimum required payments for the term as
238 disclosed;

239 (4) The total repayment amount, which is the draw amount, minus
240 any fees deducted or withheld at disbursement, plus the finance charge.
241 The total repayment amount shall assume a draw amount equal to the
242 maximum amount of credit available to the recipient if drawn and held
243 for the duration of the term or draw period;

244 (5) The term of the plan, if applicable, or the period over which a draw
245 is amortized;

246 (6) The payment frequency and amounts, based on the assumptions
247 used in the calculation of the annual percentage rate, including a
248 description of payment amount requirements such as a minimum
249 payment amount, and if the payment frequency is other than monthly,
250 the amount of the average projected payments per month. For payment
251 amounts that are variable, the provider shall include a payment
252 schedule, or a description of the method used to calculate the amounts
253 and frequency of payments, and the estimated average monthly
254 payment amount;

255 (7) A description of all other potential fees and charges that can be
256 avoided by the recipient, including, but not limited to, draw fees, late
257 payment fees and returned payment fees;

258 (8) If the recipient elects to pay off or refinance the commercial
259 financing prior to full repayment, the provider shall disclose whether
260 the recipient would be required to pay: (A) Any finance charges other
261 than interest accrued since the recipient's last payment and, if so,
262 disclosure of the percentage of any unpaid portion of the finance charge
263 and maximum dollar amount the recipient could be required to pay; and
264 (B) any additional fees not already included in the finance charge;

265 (9) A description of collateral requirements or security interests, if
266 any; and

267 (10) If the commercial financing agreement includes a waiver of the

268 recipient's right for a hearing concerning the attachment of the
269 recipient's bank account, a clear and conspicuous disclosure stating that:
270 (A) The recipient has a right to such a hearing if the provider pursues
271 such attachment; and (B) such waiver may result in the attachment of
272 the recipient's bank account without a hearing.

273 Sec. 6. (NEW) (*Effective October 1, 2022*) A provider shall provide to a
274 recipient at the time of extending a specific offer for a factoring
275 transaction the following disclosures in a format prescribed by the
276 Banking Commissioner:

277 (1) The amount of the receivables purchase price paid to the recipient
278 and, if different from the purchase price, the amount disbursed to the
279 recipient after any fees deducted or withheld at disbursement;

280 (2) The finance charge, which, for the purposes of a factoring
281 transaction, includes the discount taken on the face value of the accounts
282 receivable;

283 (3) The estimated annual percentage rate, using that term, calculated
284 according to the federal Truth in Lending Act, Regulation Z, 12 CFR
285 1026 Appendix J, as amended from time to time, as a single advance,
286 single payment transaction. To calculate the estimated annual
287 percentage rate, the purchase amount is the financing amount, the
288 purchase amount minus the finance charge is the payment amount, and
289 the term is established by the payment due date of the receivables. As
290 an alternate method of establishing the term, the provider may estimate
291 the term for a factoring transaction as the average payment period,
292 using its historical data over a period not to exceed the previous twelve
293 months, concerning payment invoices paid by the party owing the
294 accounts receivable in question;

295 (4) The total payment amount, which is the purchase amount plus the
296 finance charge;

297 (5) A description of all other potential fees and charges that may be
298 avoided by the recipient;

299 (6) A description of the receivables purchased and any additional
300 collateral requirements or security interests; and

301 (7) If the commercial financing agreement includes a waiver of the
302 recipient's right for a hearing concerning the attachment of the
303 recipient's bank account, a clear and conspicuous disclosure that: (A)
304 The recipient has a right to such a hearing if the provider pursues such
305 attachment; and (B) such waiver may result in the attachment of the
306 recipient's bank account without a hearing.

307 Sec. 7. (NEW) (*Effective October 1, 2022*) The Banking Commissioner
308 may require a provider extending a specific offer for commercial
309 financing that is not open-end financing, closed-end financing, sales-
310 based financing or a factoring transaction, but which otherwise is
311 commercial financing, to provide to a recipient at the time of extending
312 such specific offer the following disclosures in the format prescribed by
313 the Banking Commissioner:

314 (1) The total amount of the commercial financing and the
315 disbursement amount, if different from the financing amount, after any
316 fees deducted or withheld at disbursement;

317 (2) The finance charge;

318 (3) The annual percentage rate, using only the words "annual
319 percentage rate" or the abbreviation "APR", expressed as a yearly rate,
320 inclusive of any fees and finance charges, and calculated in accordance
321 with the relevant sections of Part 1026 of the federal Truth in Lending
322 Act, Regulation Z or sections 1 to 10, inclusive, of this act;

323 (4) The total repayment amount which is the disbursement amount
324 plus the finance charge;

325 (5) The term of the financing;

326 (6) The payment amounts, as follows: (A) For payment amounts that
327 are fixed, the payment amounts and frequency, and the average
328 monthly payment amount; or (B) for payment amounts that are variable,

329 a payment schedule or a description of the method used to calculate the
330 amounts and frequency of payments, and the estimated average
331 monthly payment amount;

332 (7) A description of all other potential fees and charges that can be
333 avoided by the recipient, including, but not limited to, late payment fees
334 and returned payment fees;

335 (8) If the recipient elects to pay off or refinance the commercial
336 financing prior to full repayment, the provider shall disclose whether
337 the recipient would be required to pay: (A) Any finance charges other
338 than interest accrued since the recipient's last payment and, if so,
339 disclosure of the percentage of any unpaid portion of the finance charge
340 and maximum dollar amount the recipient may be required to pay; and
341 (B) any additional fees not already included in the finance charge;

342 (9) A description of collateral requirements or security interests, if
343 any; and

344 (10) If the commercial financing agreement includes a waiver of the
345 recipient's right for a hearing concerning the attachment of the
346 recipient's bank account, a clear and conspicuous disclosure that: (A)
347 The recipient has a right to such a hearing if the provider pursues such
348 attachment; and (B) such waiver may result in the attachment of the
349 recipient's bank account without a hearing.

350 Sec. 8. (NEW) (*Effective October 1, 2022*) If as a condition of obtaining
351 commercial financing the provider requires the recipient to pay off the
352 balance of an existing commercial financing from the same provider, the
353 provider shall disclose to the recipient:

354 (1) The amount of the new commercial financing used to pay off the
355 portion of the existing commercial financing that consists of prepayment
356 charges required to be paid and any unpaid interest expense that was
357 not forgiven at the time of renewal. For financing for which the total
358 repayment amount is calculated as a fixed amount, the prepayment
359 charge is equal to the original finance charge multiplied by the amount

360 of the renewal used to pay off existing financing as a percentage of the
361 total repayment amount, minus any portion of the total repayment
362 amount forgiven by the provider at the time of prepayment. If the
363 amount is more than zero, such amount shall be included in the
364 disclosure as the answer to the following question and presented as
365 follows: "Does the renewal financing include any amount that is used to
366 pay unpaid finance charge or fees, also known as double dipping? Yes,
367 (enter amount). If the amount is zero, the answer would be No."

368 (2) If the disbursement amount will be reduced to pay down any
369 unpaid portion of the outstanding balance, the actual dollar amount by
370 which such disbursement amount will be reduced.

371 Sec. 9. (NEW) (*Effective October 1, 2022*) The provider shall obtain the
372 recipient's signature, which may be fulfilled by an electronic signature,
373 on all disclosures required to be presented to the recipient pursuant to
374 sections 1 to 10, inclusive, of this act before authorizing the recipient to
375 proceed further with the commercial financing transaction application.

376 Sec. 10. (NEW) (*Effective October 1, 2022*) Nothing in sections 1 to 10,
377 inclusive, of this act shall prevent a provider from providing or
378 disclosing additional information on a commercial financing being
379 offered to a recipient, provided such additional information shall not be
380 disclosed as part of the disclosure required by sections 1 to 10, inclusive,
381 of this act. If other information concerning financing costs is disclosed
382 or used in the application process of a commercial financing, such
383 information shall not be presented as a rate if it is not the annual interest
384 rate or the annual percentage rate. The term interest, when used to
385 describe a percentage rate, shall only be used to describe annualized
386 percentage rates, such as the annual interest rate. When a provider states
387 a rate of finance charge or a financing amount to a recipient during an
388 application process for commercial financing, the provider shall also
389 state the rate as an annual percentage rate, using that term or the
390 abbreviation "APR".

391 Sec. 11. (NEW) (*Effective October 1, 2022*) If the Banking Commissioner
392 determines that the laws of another state require commercial financing

393 disclosures that meet or exceed the commercial financing disclosure
 394 requirements established under sections 1 to 10, inclusive, of this act,
 395 any commercial financing disclosure form that such other state
 396 approves for the purposes of complying with such other state's
 397 commercial financing disclosure laws may be used for the purposes of
 398 complying with the commercial financing disclosure requirements
 399 established under sections 1 to 10, inclusive, of this act.

400 Sec. 12. (NEW) (*Effective October 1, 2022*) The Banking Commissioner
 401 may adopt regulations in accordance with the provisions of chapter 54
 402 of the general statutes to carry out the provisions of sections 1 to 11,
 403 inclusive, of this act.

404 Sec. 13. (NEW) (*Effective October 1, 2022*) (a) Any provider who
 405 violates any provision of sections 1 to 11, inclusive, of this act or any
 406 regulation adopted pursuant to section 12 of this act shall be liable for a
 407 civil penalty of not more than two thousand dollars for each violation
 408 or, in the case of a wilful violation, not more than ten thousand dollars
 409 for each violation.

410 (b) In addition to any penalty imposed pursuant to subsection (a) of
 411 this section, if the Banking Commissioner finds that a provider has
 412 knowingly violated any provision of sections 1 to 11, inclusive, of this
 413 act or any regulation adopted pursuant to section 12 of this act, the
 414 commissioner may order additional relief, including, but not limited to,
 415 a permanent or preliminary injunction on behalf of any recipient
 416 affected by the violation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2022</i>	New section
Sec. 2	<i>October 1, 2022</i>	New section
Sec. 3	<i>October 1, 2022</i>	New section
Sec. 4	<i>October 1, 2022</i>	New section
Sec. 5	<i>October 1, 2022</i>	New section
Sec. 6	<i>October 1, 2022</i>	New section
Sec. 7	<i>October 1, 2022</i>	New section

Sec. 8	October 1, 2022	New section
Sec. 9	October 1, 2022	New section
Sec. 10	October 1, 2022	New section
Sec. 11	October 1, 2022	New section
Sec. 12	October 1, 2022	New section
Sec. 13	October 1, 2022	New section

Statement of Legislative Commissioners:

In Section 2, "for purposes of the foregoing sentence" was changed to "for purposes of this section" for consistency with the style of the general statutes; and, in Section 3(3), "as described in subparagraphs (A) and (B) of this subsection" was changed to "as described in subparagraphs (A) and (B) of this subdivision" for accuracy.

BA *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 23 \$	FY 24 \$
Banking Dept.	BF - Cost	351,398	351,640
Banking Dept.	BF - Potential Revenue Gain	See Below	See Below

Note: BF=Banking Fund

Municipal Impact: None

Explanation

The bill requires certain lenders to disclose information on commercial financing transactions to the Department of Banking (DOB). This is anticipated to result in a state cost of \$351,398 in FY 23 and \$351,640 in FY 24 paid from the Banking Fund. Violations of the bill's provisions are subject to a civil penalty of up to \$10,000 and may result in a revenue gain dependent upon the number of penalties and the fines imposed.

The additional cost to the state includes personnel cost to DOB to hire one Staff Attorney 2 and one Financial Examiner necessary to implement the provisions of the bill as the DOB currently does not work with such transactions. The salary for a Staff Attorney 2 is \$100,000. The salary range for a Financial Examiner is \$70,930 - \$90,694. The estimate is based on the salary of the Staff Attorney 2, \$100,000 and fringe benefit rate of \$99,730, and the starting salary of the Financial Examiner, \$70,930 and fringe rate of \$70,738, charged to the Banking Fund¹. There is also a

¹ The fringe benefit costs for employees funded out of other appropriated funds are budgeted within the fringe benefit account of those funds, rather than the fringe benefit accounts within the Office of the State Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes for other appropriated fund employees is 99.73% of payroll in FY 23.

one-time cost of \$10,000 for equipment and training in FY 23.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Core-CT Financial Accounting System

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)