



General Assembly

February Session, 2022

Raised Bill No. 272

LCO No. 2636



Referred to Committee on BANKING

Introduced by:
(BA)

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 10, 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; (B) person acting in such person's capacity as a
55 technology services provider to an entity exempt under this section for
56 use as part of the exempt entity's commercial financing program,
57 provided such person has no interest, arrangement or agreement to
58 purchase any interest in the commercial financing extended by the
59 exempt entity in connection with such program; (C) lender regulated
60 under the federal Farm Credit Act, 12 USC 2001 et seq.; (D) commercial
61 financing transaction secured by real property; (E) lease as defined in
62 section 42a-2A-102 of the general statutes; (F) person or provider who
63 makes no more than five commercial financing transactions in this state
64 in a twelve-month period; or (G) individual commercial financing
65 transaction in an amount over five hundred thousand dollars;

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

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

77 (11) "Specific offer" means the specific terms of commercial financing,
78 including price or amount, that is quoted to a recipient based on
79 information obtained from or about the recipient, which, if accepted by

80 a recipient, shall be binding on the provider, as applicable, subject to
81 any specific requirements stated in such terms.

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

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

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

100 (2) The finance charge;

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

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

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

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

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

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

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

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

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

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

171 (10) If the commercial financing agreement includes a waiver of the
172 recipient's right for a hearing concerning the attachment of the
173 recipient's bank account, a clear and conspicuous disclosure that: (A)
174 The recipient has a right to such a hearing if the provider pursues such
175 attachment, and (B) such waiver may result in the attachment of the
176 recipient's bank account without a hearing.

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

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

184 (2) The finance charge;

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

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

193 (5) The term of the financing;

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

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

204 (8) If the recipient elects to pay off or refinance the commercial
205 financing prior to full repayment, the provider shall disclose whether
206 the recipient would be required to pay: (A) Any finance charges other

207 than interest accrued since the recipient's last payment and, if so,
208 disclosure of the percentage of any unpaid portion of the finance charge
209 and maximum dollar amount the recipient may be required to pay; and
210 (B) any additional fees not included in the finance charge;

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

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

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

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

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

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

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

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

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

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

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

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

266 (10) If the commercial financing agreement includes a waiver of the
267 recipient's right for a hearing concerning the attachment of the
268 recipient's bank account, a clear and conspicuous disclosure stating that:

269 (A) The recipient has a right to such a hearing if the provider pursues
270 such attachment; and (B) such waiver may result in the attachment of
271 the recipient's bank account without a hearing.

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

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

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

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

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

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

298 (6) A description of the receivables purchased and any additional

299 collateral requirements or security interests; and

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

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

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

316 (2) The finance charge;

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

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

324 (5) The term of the financing;

325 (6) The payment amounts, as follows: (A) For payment amounts that
326 are fixed, the payment amounts and frequency, and the average
327 monthly payment amount; or (B) for payment amounts that are variable,
328 a payment schedule or a description of the method used to calculate the

329 amounts and frequency of payments, and the estimated average
330 monthly payment amount;

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

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

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

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

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

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

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

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

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

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

390 Sec. 11. (NEW) (*Effective October 1, 2022*) The Banking Commissioner
391 may adopt regulations in accordance with the provisions of chapter 54

392 of the general statutes to carry out the provisions of sections 1 to 10,
 393 inclusive, of this act.

394 Sec. 12. (NEW) (*Effective October 1, 2022*) (a) Any provider who
 395 violates any provision of sections 1 to 10, inclusive, of this act or any
 396 regulation adopted pursuant to section 11 of this act shall be liable for a
 397 civil penalty of not more than two thousand dollars for each violation
 398 or, in the case of a wilful violation, not more than ten thousand dollars
 399 for each violation.

400 (b) In addition to any penalty imposed pursuant to subsection (a) of
 401 this section, if the Banking Commissioner finds that a provider has
 402 knowingly violated any provision of sections 1 to 10, inclusive, of this
 403 act or any regulation adopted pursuant to section 11 of this act, the
 404 commissioner may order additional relief, including, but not limited to,
 405 a permanent or preliminary injunction on behalf of any recipient
 406 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	<i>October 1, 2022</i>	New section
Sec. 9	<i>October 1, 2022</i>	New section
Sec. 10	<i>October 1, 2022</i>	New section
Sec. 11	<i>October 1, 2022</i>	New section
Sec. 12	<i>October 1, 2022</i>	New section

Statement of Purpose:

To require certain financing disclosures.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

