
OLR Bill Analysis

sSB 1032 (File 196, as amended by Senate “A” and “B”)*

AN ACT REQUIRING CERTAIN FINANCING DISCLOSURES.

SUMMARY

This bill requires certain lenders offering specific types of commercial financing to give applicants information on, among other things, the financing amount, finance charges, the total repayment amount, the term, payment amounts, other potential fees, any prepayment costs, and any collateral requirements.

Under the bill, “commercial financing,” is a sales-based financing transaction of \$250,000 or less, the proceeds of which are not primarily intended for personal, family, or household purposes. “Sales-based financing” is a transaction that is repaid by the recipient to the provider over time (1) as 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.

Generally, the bill also requires these lenders to annually register with the Department of Banking starting by October 1, 2024. It also prohibits commercial financing contracts entered into on or after July 1, 2024, from having any provision waiving a recipient’s right to notice, judicial hearing, or prior court order under Connecticut’s prejudgment remedies laws. It also limits lenders’ ability to revoke, withdraw, or modify specific offers.

Violations of the bill’s provisions are subject to the same existing civil penalties for other violations the state’s banking laws under which the Department of Banking commissioner may, among other things, impose a fine of up to \$100,000 per violation. The bill further allows the commissioner to seek injunctive relief or take other enforcement actions

if he finds that a provider knowingly violated these laws.

The bill also authorizes the banking commissioner to adopt implementing regulations.

*Senate Amendment “A” principally (1) pushes out the bill’s effective date by six months from January 1, 2024, to July 1, 2024; (2) removes requirements that providers give recipients estimated annual percentage rates (APRs) and other disclosures based on projected sales volume; (3) prohibits commercial financing contracts from having any provision waiving a recipient’s right to notice, judicial hearing, or prior court order under state law in connection with the provider obtaining any prejudgment remedy; (4) limits providers’ ability to revoke, withdraw, or modify specific offers; (5) requires providers and commercial financing brokers, by October 1, 2024, to register with the banking commissioner and get authority to transact business in Connecticut; and (6) eliminates the civil penalty of up to \$10,000 for willful violations of the bill’s provisions.

*Senate Amendment “B” replaces Senate Amendment “A” with substantially similar provisions and some additional changes. Principally, the changes to Senate “A” include (1) replacing the bill’s definitions for “financial institution” and “affiliate of a financial institution” with similar existing terminology in the state’s banking laws, (2) making minor changes to specify what a commercial financing disbursement amount is, (3) allowing specific offers to be revoked, withdrawn, or modified, under certain circumstances and (4) increasing the maximum penalty for a violation from \$2,000 to \$100,000.

EFFECTIVE DATE: July 1, 2024

§§ 1 & 2 — AFFECTED LENDERS AND FINANCING OFFERS

The bill imposes its commercial financing-related disclosure requirements on “providers,” defined as any person (natural person or business entity) who extends a specific offer of commercial financing to a recipient.

Provider Exclusions

Financial Institutions and Affiliates. Under the bill, a “provider” excludes the following entities: (1) Connecticut banks and credit unions, (2) federal banks and credit unions, (3) out-of-state banks and credit unions, (4) bank holding companies, and (5) any of their subsidiaries or affiliates, as all are defined under the state’s banking laws (CGS § 36a-2).

Other Lenders. Additionally, a “provider” also excludes any lender regulated under the federal Farm Credit Act (12 U.S.C. § 2001 et seq.) or person or provider who extends or brokers the following:

1. a commercial financing transaction (a) secured by real property; (b) entered into through a commercial financing agreement or commercial open-end credit plan of at least \$50,000 where the recipient is, generally, an in-state motor vehicle or trailer dealer or a motor vehicle rental company, or their affiliates; or (c) in connection with the sale of products or services that he or she manufactures, licenses, or distributes, or whose parent company, subsidiary, or affiliate manufactures, licenses, or distributes;
2. a lease under the Uniform Commercial Code–Leases (CGS § 42a-2A-102) or purchase-money obligation under the Uniform Commercial Code–Secured Transactions (CGS § 42a-9-103a); or
3. no more than five commercial financing transactions in Connecticut in a 12-month period.

Technology Service Providers. Under the bill, “provider” also excludes a 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.

Specific Offer Defined

Under the bill, a “specific offer” is the specific terms of commercial financing, including price or amount, that are quoted to a recipient based on information obtained from or about the recipient, which, if accepted, is generally binding on the provider.

Recipient, Commercial Financing Broker, and Financer Defined

Under the bill, a “recipient” is a person or a person’s authorized representative, but not a commercial financing broker, who applies for commercial financing and is made a specific offer. A “commercial financing broker” is anyone other than a financer who, for compensation or the expectation of compensation, offers commercial financing or offers to obtain it for a recipient from a non-exempt provider. A “financer” is anyone who provides or will provide commercial financing to a recipient.

Commercial Financing Determination

To determine whether a financing is a commercial financing, the bill allows providers to rely on a recipient’s statement of intended purpose. Such a statement may be any of the following:

1. a separate statement signed by the recipient;
2. a statement contained in the financing application, financing agreement, or other document signed or consented to by the recipient;
3. a statement provided orally by the recipient if it is documented in the recipient’s application file by the provider; or
4. a statement given electronically.

Providers are not required to learn whether the recipients used proceeds in line with their statements.

§§ 1 & 3 — INITIAL DISCLOSURES

The bill requires providers, when extending a specific offer for sales-based financing, to give recipients certain disclosures in a format prescribed by the commissioner. This includes disclosing the “finance charge,” which is the cost of financing expressed as a dollar amount, including (1) any direct or indirect charge payable by the recipient and directly or indirectly imposed by the provider and (2) all finance charges as defined under the federal Truth in Lending Act’s (TILA’s) Regulation Z (12 C.F.R. § 1026.4).

Additionally, a provider must disclose to the recipient the following information:

1. the total amount of the commercial financing;
2. the disbursement amount (i.e., the amount paid to the recipient or on the recipient's behalf, excluding any finance charges that are deducted or withheld at disbursement);
3. the total repayment amount (i.e., the disbursement amount plus finance charge);
4. the estimated term, which is the period of time required for the periodic payments to equal the total repayment amount;
5. the payment amounts as well as (a) if payments are fixed, their frequency; 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;
6. 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;
7. any finance charge the recipient will be required to pay if the recipient elects to pay off or refinance prior to full repayment, other than interest accrued since the recipient's last payment, and the percentage of any unpaid portion of the finance charge and the maximum dollar amount of the finance charge the recipient will be required to pay, as well as any additional fees, not already included in the finance charge, the recipient will be required to pay;
8. a description of collateral requirements or security interests, if any; and
9. whether, in connection with the specific offer for sales-based financing, the provider will pay compensation directly to a

commercial financing broker out of the financed amount and, if so, the compensation amount.

§ 4 — ADDITIONAL DISCLOSURES FOR RENEWAL FINANCING

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

New Financing Amount

Specifically, the provider must disclose the amount of the new financing used to pay off the part of the existing financing that consists of (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.

Reductions From Disbursement Amount

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

§§ 5-7 — FURTHER DISCLOSURE REQUIREMENTS

The bill requires each provider to get a recipient's signature on all of the above disclosures before authorizing the recipient to continue with the commercial financing transaction application. Electronic signatures are allowed under the bill (§ 5).

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 (§ 6).

The bill allows the commissioner to accept another state's commercial financing disclosure form used to comply with the bill's disclosure

requirements if he determines that the laws in the other state meet or exceed the bill's requirements (§ 7).

§ 8 — PREJUDGMENT REMEDY WAIVERS

The bill prohibits commercial financing contracts entered into on or after July 1, 2024, from having any provision waiving a recipient's right to notice, judicial hearing, or prior court order under Connecticut's prejudgment remedies laws. This prohibition applies to waivers in connection with the provider getting any prejudgment remedy, including attachment, execution, garnishment, or replevin (i.e., generally, possession of personal property), when starting any litigation against the recipient. Under the bill, any such waiver in a commercial financing contract entered into on or after July 1, 2024, is unenforceable.

§ 9 — SPECIFIC OFFER CHANGES

The bill prohibits providers from revoking, withdrawing, or modifying specific offers made on or after July 1, 2024, until midnight of the third calendar day after the date of the specific offer. However, the bill allows them to be revoked, withdrawn, or modified (1) based on information obtained in the underwriting process, including verification of any information provided by the recipient or (2) at the recipient's request.

Additionally, a specific offer may state that it is (1) based on the provider's preliminary review of application information only and (2) not a final approval or commitment to provide sales-based financing.

§ 10 — PROVIDER AND COMMERCIAL FINANCING BROKER REGISTRATION

The bill requires providers and commercial financing brokers, by October 1, 2024, to (1) register with the commissioner and (2) get authority to transact business in Connecticut unless they are organized under the state's laws or are foreign entities who are not required to do so.

Registration must be done as the commissioner prescribes and applicants must disclose any judgment, memorandum of

understanding, cease and desist order, or conviction that involves a crime or an act of fraud, breach of trust, or money laundering by (1) the applicant or (2) any officer, director, manager, operator, or person who otherwise controls the applicant's operations. Applicants must also pay \$1,000 for initial registrations and \$500 by September 15th annually after. Under the bill, registrations must automatically expire by operation of law if a provider or commercial financing broker fails to timely pay its annual registration fee.

§§ 11-12 — IMPLEMENTING REGULATIONS, PENALTIES, AND ENFORCEMENT

The bill authorizes the commissioner to adopt regulations to carry out the bill's provisions. It also subjects a provider who violates any of its provisions or the implementing regulations to the same existing civil penalties for other violations the state's banking laws. By law, the commissioner may, after an investigation finding that a person committed a violation, (1) conduct an administrative hearing proceeding on the violation, (2) impose a fine of up to \$100,000 per violation, and (3) order restitution or disgorgement. He may also take court action if it appears to him that the person violated, is violating, or is about to commit a violation. He may seek an injunction or direct compliance, a court order imposing a penalty of up to \$100,000 per violation, or an order of restitution (CGS § 36a-50).

In addition to these penalties, if the commissioner finds that a provider has knowingly violated these laws, he may seek an injunction in a court of competent jurisdiction and take other enforcement actions, such as ordering the provider to make restitution or provide disgorgement, on behalf of any recipient affected by the violation.

COMMITTEE ACTION

Banking Committee

Joint Favorable Substitute

Yea 10 Nay 2 (03/07/2023)

Judiciary Committee

Joint Favorable

Yea 22 Nay 11 (05/03/2023)

Appropriations Committee

Joint Favorable

Yea 40 Nay 5 (05/19/2023)