



General Assembly

**Substitute Bill No. 1032**

January Session, 2023



**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 January 1, 2024*) As used in this section and  
2 sections 2 to 9, inclusive, of this act:

3 (1) "Affiliate of a financial institution" means an entity that is  
4 controlled by, or is under common control with, a financial institution,  
5 such that the financial institution (A) directly or indirectly, acting  
6 through one or more other persons, owns, controls or has the power to  
7 vote more than fifty per cent of any class of voting securities of the  
8 affiliated entity, (B) controls, in any manner, the election of a majority of  
9 the directors or trustees of the affiliated entity, or (C) directly or  
10 indirectly exercises a controlling influence over the management or  
11 policies of the affiliated entity;

12 (2) "Commercial financing" means any extension of sales-based  
13 financing in an amount not exceeding two hundred fifty thousand  
14 dollars, the proceeds of which the recipient does not intend to use  
15 primarily for personal, family or household purposes;

16 (3) "Commercial financing broker" means a person, other than a  
17 financier, who, for compensation or the expectation of compensation,  
18 offers, or offers to obtain, commercial financing for a recipient from a

19 provider that is not exempt;

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

28 (5) "Financer" means a person who provides, or will provide,  
29 commercial financing to a recipient;

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

40 (7) "Person" means an individual, corporation, partnership, limited  
41 liability company, joint venture, association, joint stock company, trust  
42 or unincorporated organization, including, but not limited to, a sole  
43 proprietorship;

44 (8) "Provider" means a person who extends a specific offer of  
45 commercial financing to a recipient and includes, unless otherwise  
46 exempt under this section, a commercial financing broker, but does not  
47 include any (A) financial institution or affiliate of a financial institution,  
48 (B) person acting in such person's capacity as a technology services  
49 provider to an entity exempt under this section for use as part of the

50 exempt entity's commercial financing program, provided such person  
51 has no interest, arrangement or agreement to purchase any interest in  
52 the commercial financing extended by the exempt entity in connection  
53 with such program, (C) lender regulated under the federal Farm Credit  
54 Act, 12 USC 2001 et seq., as amended from time to time, (D) person or  
55 provider who extends or brokers a commercial financing transaction  
56 secured by real property, (E) person or provider who extends or brokers  
57 a lease, as defined in section 42a-2A-102 of the general statutes, (F)  
58 person or provider who extends or brokers a purchase-money  
59 obligation, as defined in section 42a-9-103a of the general statutes, (G)  
60 person or provider who extends not more than five commercial  
61 financing transactions in this state in a twelve-month period, (H) person  
62 or provider who extends or brokers a commercial financing transaction  
63 entered into pursuant to a commercial financing agreement or  
64 commercial open-end credit plan of at least fifty thousand dollars, in  
65 which the recipient is (i) a dealer, as defined in section 14-1 of the general  
66 statutes, or an affiliate of such a dealer, or (ii) a motor vehicle rental  
67 company, or an affiliate of such a company, or (I) person or provider  
68 who extends or brokers a commercial financing transaction in  
69 connection with the sale of products or services that such person or  
70 provider manufactures, licenses or distributes, or whose parent  
71 company, subsidiary or affiliate manufactures, licenses or distributes;

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

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

83 (11) "Specific offer" means the specific terms of commercial financing,  
84 including, but not limited to, a price or amount, that is quoted to a  
85 recipient based on information obtained from or about the recipient,  
86 which, if accepted by the recipient, would be binding on the provider,  
87 subject to any specific requirements stated in such terms.

88 Sec. 2. (NEW) (*Effective January 1, 2024*) For purposes of determining  
89 whether financing is commercial financing, a provider may rely on any  
90 statement of intended purpose made by the recipient. The statement  
91 may be (1) a separate statement signed by the recipient, (2) contained in  
92 the financing application, financing agreement or other document  
93 signed or consented to by the recipient, or (3) provided orally by the  
94 recipient if such oral statement is documented in the recipient's  
95 application file by the provider. Electronic signatures and consents are  
96 valid for purposes of this section. A provider shall not be required to  
97 ascertain that the proceeds of commercial financing are used in  
98 accordance with the recipient's statement of intended purpose.

99 Sec. 3. (NEW) (*Effective January 1, 2024*) A provider shall provide to a  
100 recipient, when the provider extends a specific offer for sales-based  
101 financing, the following disclosures in a format prescribed by the  
102 Banking Commissioner:

103 (1) The total amount of the commercial financing and the  
104 disbursement amount, if different from the financing amount, after any  
105 fees are deducted or withheld at disbursement.

106 (2) The finance charge.

107 (3) The estimated annual percentage rate, using the words "annual  
108 percentage rate" or the abbreviation "APR", expressed as a yearly rate,  
109 inclusive of any fees and finance charges, and calculated in accordance  
110 with 12 CFR 1026.22, as amended from time to time, based on the  
111 estimated term of repayment and the projected periodic payment  
112 amounts. The estimated term of repayment and the projected periodic  
113 payment amounts shall be calculated based on a projection of the

114 recipient's sales. The projected sales volume may be calculated using the  
115 historical method or the opt-in method as described in subparagraphs  
116 (A) and (B) of this subdivision. The provider shall provide notice to the  
117 Banking Commissioner, in a form and manner prescribed by the  
118 commissioner, disclosing which method the provider intends to use in  
119 all instances of sales-based financing offered in calculating the estimated  
120 annual percentage rate pursuant to this section.

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

132 (B) A provider using the opt-in method shall determine the estimated  
133 annual percentage rate, the estimated term and the projected payments  
134 using a projected sales volume that the provider elects for each  
135 disclosure, provided such provider participates in a review process  
136 prescribed by the commissioner. A provider shall, not later than October  
137 1, 2024, and annually thereafter, report data to the commissioner  
138 disclosing the estimated annual percentage rates the provider disclosed  
139 to recipients and the actual retrospective annual percentage rates of  
140 completed transactions. The report shall contain such information as the  
141 commissioner may prescribe as necessary or appropriate for the  
142 purpose of making a determination of whether the deviation between  
143 the estimated annual percentage rate and the actual retrospective  
144 annual percentage rates of completed transactions was reasonable. The  
145 commissioner shall establish the method of reporting and may, upon a  
146 finding by the commissioner that the use of projected sales volume by

147 the provider has resulted in an unacceptable deviation between the  
148 estimated and actual annual percentage rates, require the provider to  
149 use the historical method. The commissioner may consider unusual and  
150 extraordinary circumstances impacting the provider's deviation  
151 between estimated and actual annual percentage rates in making such  
152 finding.

153 (4) The total repayment amount, which is the disbursement amount  
154 plus the finance charge.

155 (5) The estimated time period required for the periodic payments to  
156 equal the total amount required to be repaid based on the projected sales  
157 volume.

158 (6) The payment amounts, based on the projected sales volume, as  
159 follows:

160 (A) For payment amounts that are fixed, the payment amounts and  
161 frequency, and, if the payment frequency is other than monthly, the  
162 amount of the average projected payments per month; or

163 (B) For payment amounts that are variable, a payment schedule or a  
164 description of the method used to calculate the amounts and frequency  
165 of payments, and the amount of the average projected payments per  
166 month.

167 (7) A description of all other potential fees and charges not included  
168 in the finance charge, including, but not limited to, draw fees, late  
169 payment fees and returned payment fees.

170 (8) (A) Any finance charge the recipient will be required to pay if the  
171 recipient elects to pay off or refinance the commercial financing prior to  
172 full repayment, other than interest accrued since the recipient's last  
173 payment, and the percentage of any unpaid portion of such finance  
174 charge and the maximum dollar amount of such finance charge the  
175 recipient will be required to pay; and

176 (B) Any additional fees, not already included in the finance charge,  
177 the recipient will be required to pay if the recipient elects to pay off or  
178 refinance the commercial financing prior to full repayment.

179 (9) A description of collateral requirements or security interests, if  
180 any.

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

184 (A) The recipient has a right to such a hearing if the provider pursues  
185 such attachment; and

186 (B) Such waiver may result in the attachment of the recipient's bank  
187 account without a hearing.

188 (11) Whether, in connection with the specific offer of sales-based  
189 financing, the provider will pay compensation directly to a commercial  
190 financing broker out of the financed amount and, if so, the amount of  
191 such compensation.

192 Sec. 4. (NEW) (*Effective January 1, 2024*) If as a condition of obtaining  
193 commercial financing the provider requires the recipient to pay off the  
194 balance of existing commercial financing from the same provider, the  
195 provider shall disclose to the recipient:

196 (1) The amount of the new commercial financing used to pay off the  
197 portion of the existing commercial financing that consists of prepayment  
198 charges required to be paid and any unpaid interest expense that was  
199 not forgiven at the time of renewal. For financing for which the total  
200 repayment amount is calculated as a fixed amount, the prepayment  
201 charge is equal to the original finance charge multiplied by the amount  
202 of the renewal used to pay off existing financing as a percentage of the  
203 total repayment amount, minus any portion of the total repayment  
204 amount forgiven by the provider at the time of prepayment. If the  
205 amount is more than zero, such amount shall be included in the

206 disclosure as the answer to the following question and presented as  
207 follows: "Does the renewal financing include any amount that is used to  
208 pay unpaid finance charges or fees, also known as double dipping? Yes,  
209 (enter amount). If the amount is zero, the answer would be No."

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

213 Sec. 5. (NEW) (*Effective January 1, 2024*) The provider shall obtain the  
214 recipient's signature, which may be fulfilled by an electronic signature,  
215 on all disclosures required to be presented to the recipient pursuant to  
216 sections 1 to 6, inclusive, of this act before authorizing the recipient to  
217 proceed further with the commercial financing transaction application.

218 Sec. 6. (NEW) (*Effective January 1, 2024*) Nothing in this section or  
219 sections 1 to 5, inclusive, of this act shall prevent a provider from  
220 providing or disclosing additional information concerning commercial  
221 financing offered to a recipient, provided such additional information  
222 shall not be disclosed as part of any disclosure required pursuant to this  
223 section or sections 1 to 5, inclusive, of this act. If other information  
224 concerning financing costs is disclosed or used in the application  
225 process for commercial financing, such information shall not be  
226 presented as a rate other than the annual interest rate or the annual  
227 percentage rate. The term interest, when used to describe a percentage  
228 rate, shall only be used to describe annualized percentage rates, such as  
229 the annual interest rate. When a provider states the rate of a finance  
230 charge or a financing amount to a recipient during an application  
231 process for commercial financing, the provider shall also state the rate  
232 as an annual percentage rate, using that term or the abbreviation "APR".

233 Sec. 7. (NEW) (*Effective January 1, 2024*) If the Banking Commissioner  
234 determines that the laws of another state require commercial financing  
235 disclosures that meet or exceed the commercial financing disclosure  
236 requirements established under sections 1 to 6, inclusive, of this act, any  
237 commercial financing disclosure form that such other state approves for



238 the purposes of complying with such other state's commercial financing  
239 disclosure laws may be used for the purposes of complying with the  
240 commercial financing disclosure requirements established under  
241 sections 1 to 6, inclusive, of this act.

242 Sec. 8. (NEW) (Effective January 1, 2024) The Banking Commissioner  
243 may adopt regulations, in accordance with the provisions of chapter 54  
244 of the general statutes, to carry out the provisions of sections 1 to 9,  
245 inclusive, of this act.

246 Sec. 9. (NEW) (Effective January 1, 2024) (a) Any provider who violates  
247 any provision of sections 1 to 7, inclusive, of this act or any regulation  
248 adopted pursuant to section 8 of this act shall be liable for a civil penalty  
249 not to exceed two thousand dollars per violation or, in the case of a  
250 wilful violation, not to exceed ten thousand dollars per violation.

251 (b) In addition to any civil penalty imposed under subsection (a) of  
252 this section, if the Banking Commissioner finds that a provider has  
253 knowingly violated any provision of sections 1 to 7, inclusive, of this act  
254 or any regulation adopted pursuant to section 8 of this act, the  
255 commissioner may seek an injunction in a court of competent  
256 jurisdiction, and may exercise the powers granted to the commissioner  
257 under section 36a-50 of the general statutes, on behalf of any recipient  
258 affected by the violation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	January 1, 2024	New section
Sec. 2	January 1, 2024	New section
Sec. 3	January 1, 2024	New section
Sec. 4	January 1, 2024	New section
Sec. 5	January 1, 2024	New section
Sec. 6	January 1, 2024	New section
Sec. 7	January 1, 2024	New section
Sec. 8	January 1, 2024	New section
Sec. 9	January 1, 2024	New section

**BA**      *Joint Favorable Subst.*

**JUD**      *Joint Favorable*