



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*

APP *Joint Favorable*