



General Assembly

January Session, 2021

**Committee Bill No. 745**

LCO No. 3907



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, 2021*) 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 equipment financing that is not  
5 considered a lease, as defined in section 42a-2A-102 of the general  
6 statutes, the proceeds of which the recipient does not intend to use  
7 primarily for personal, family or household purposes. "Closed-end  
8 financing" includes financing with an established principal amount and  
9 duration.

10 (2) "Commercial financing" means open-end financing, closed-end  
11 financing, sales-based financing, factoring transaction or any other form  
12 of financing, the proceeds of which the recipient does not intend to use  
13 primarily for personal, family or household purposes. For purposes of  
14 determining whether a financing is a commercial financing, the  
15 provider may rely on any statement of intended purposes by the  
16 recipient. The statement may be (A) a separate statement signed by the

17 recipient; (B) contained in the financing application, financing  
18 agreement or other document signed or consented to by the recipient;  
19 or (C) provided orally by the recipient so long as it is documented in the  
20 recipient's application file by the provider. Electronic signatures and  
21 consents are valid for purposes of the foregoing sentence. The provider  
22 shall not be required to ascertain that the proceeds of a commercial  
23 financing are used in accordance with the recipient's statement of  
24 intended purposes.

25 (3) "Factoring transaction" means an accounts receivable purchase  
26 transaction that includes an agreement to purchase, transfer or sell a  
27 legally enforceable claim for payment held by a recipient for goods the  
28 recipient has supplied or services the recipient has rendered that have  
29 been ordered but for which payment has not yet been made.

30 (4) "Finance charge" means the cost of financing as a dollar amount,  
31 including (A) any charge payable directly or indirectly by the recipient  
32 and imposed directly or indirectly by the provider as an incident to or a  
33 condition of the extension of financing, (B) all charges that would be  
34 included under 12 CFR Part 1026.4, as amended from time to time, as if  
35 the transaction were subject to 12 CFR Part 1026.4, as amended from  
36 time to time, and (C) any charges as determined by the Banking  
37 Commissioner. For the purposes of an open-end financing, the finance  
38 charge shall assume the maximum amount of credit available to the  
39 recipient, in each case, is drawn and held for the duration of the term or  
40 draw period. For the purposes of a factoring transaction, the finance  
41 charge includes the discount taken on the face value of the accounts  
42 receivable.

43 (5) "Financial institution" means any of the following: (A) A bank,  
44 trust company or industrial loan company doing business under the  
45 authority of, or in accordance with, a license, certificate or charter issued  
46 by the United States, this state or any other state, district, territory or  
47 commonwealth of the United States that is authorized to transact  
48 business in this state; (B) a federally chartered savings and loan

49 association, federal savings bank or federal credit union that is  
50 authorized to transact business in this state; or (C) a savings and loan  
51 association, savings bank or credit union organized under the laws of  
52 this or any other state that is authorized to transact business in this state.

53 (6) "Open-end financing" means an agreement for one or more  
54 extensions of open-end credit, secured or unsecured, the proceeds of  
55 which the recipient does not intend to use primarily for personal, family  
56 or household purposes. "Open-end financing" includes credit extended  
57 by a provider under a plan in which: (A) The provider reasonably  
58 contemplates repeated transactions; (B) the provider may impose a  
59 finance charge from time to time on an outstanding unpaid balance; and  
60 (C) the amount of credit that may be extended to the recipient during  
61 the term of the plan up to any limit set by the provider is generally made  
62 available to the extent that any outstanding balance is repaid.

63 (7) "Person" means an individual, corporation, partnership, limited  
64 liability company, joint venture, association, joint stock company, trust  
65 or unincorporated organization, including, but not limited to, a sole  
66 proprietorship.

67 (8) "Provider" means a person who extends a specific offer of  
68 commercial financing to a recipient and includes, unless otherwise  
69 exempt, a person who solicits and presents specific offers of commercial  
70 financing on behalf of a third party.

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

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

80 for a reconciliation process that adjusts the payment to an amount that  
81 is a percentage of sales or revenue.

82 (11) "Specific offer" means the specific terms of commercial financing,  
83 including price or amount, that is quoted to a recipient based on  
84 information obtained from or about the recipient, which, if accepted by  
85 a recipient, shall be binding on the provider, as applicable, subject to  
86 any specific requirements stated in such terms.

87 Sec. 2. (NEW) (*Effective October 1, 2021*) The provisions of sections 1  
88 to 10, inclusive, of this act shall not apply to any: (1) Financial institution;  
89 (2) person acting in such person's capacity as a technology services  
90 provider to an entity exempt under this section for use as part of the  
91 exempt entity's commercial financing program, provided such person  
92 has no interest, or arrangement or agreement to purchase any interest in  
93 the commercial financing extended by the exempt entity in connection  
94 with such program; (3) lender regulated under the federal Farm Credit  
95 Act, 12 USC 2001 et seq.; (4) commercial financing transaction secured  
96 by real property; (5) lease as defined in section 42a-2A-102 of the general  
97 statutes; (6) person or provider who makes no more than five  
98 commercial financing transactions in this state in a twelve-month  
99 period; or (7) individual commercial financing transaction in an amount  
100 over five hundred thousand dollars.

101 Sec. 3. (NEW) (*Effective October 1, 2021*) A provider subject to the  
102 provisions of sections 1 to 10, inclusive, of this act shall provide to a  
103 recipient at the time of extending a specific offer for sales-based  
104 financing the following disclosures in a format prescribed by the  
105 Banking Commissioner:

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

109 (2) The finance charge;

110 (3) The estimated annual percentage rate, using the words annual  
111 percentage rate or the abbreviation "APR", expressed as a yearly rate,  
112 inclusive of any fees and finance charges, and calculated in accordance  
113 with the federal Truth in Lending Act, Regulation Z, 12 CFR 1026.22, as  
114 amended from time to time, based on the estimated term of repayment  
115 and the projected periodic payment amounts. The estimated term of  
116 repayment and the projected periodic payment amounts shall be  
117 calculated based on the projection of the recipient's sales. The projected  
118 sales volume may be calculated using the historical method or the opt-  
119 in method as described in subparagraphs (A) and (B) of this subsection.  
120 The provider shall provide notice to the Banking Commissioner of  
121 which method they intend to use across all instances of sales-based  
122 financing offered in calculating estimated annual percentage rate  
123 pursuant to this section.

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

135 (B) A provider using the opt-in method shall determine the estimated  
136 annual percentage rate, the estimated term and the projected payments  
137 using a projected sales volume that the provider elects for each  
138 disclosure, provided such provider participates in a review process  
139 prescribed by the commissioner. A provider shall, not later than October  
140 1, 2022, and annually thereafter, report data to the commissioner of  
141 estimated annual percentage rates disclosed to recipients and actual  
142 retrospective annual percentage rates of completed transactions. The

143 report shall contain such information as the commissioner may  
144 prescribe as necessary or appropriate for the purpose of making a  
145 determination of whether the deviation between the estimated annual  
146 percentage rate and actual retrospective annual percentage rates of  
147 completed transactions was reasonable. The commissioner shall  
148 establish the method of reporting and may, upon a finding that the use  
149 of projected sales volume by the provider has resulted in an  
150 unacceptable deviation between estimated and actual annual  
151 percentage rate, require the provider to use the historical method. The  
152 commissioner may consider unusual and extraordinary circumstances  
153 impacting the provider's deviation between estimated and actual  
154 annual percentage rate in the determination of such finding.

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

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

160 (6) The payment amounts, based on the projected sales volume as  
161 follows: (A) For payment amounts that are fixed, the payment amounts  
162 and frequency, and, if the payment frequency is other than monthly, the  
163 amount of the average projected payments per month; or (B) for  
164 payment amounts that are variable, a payment schedule or a description  
165 of the method used to calculate the amounts and frequency of payments,  
166 and the amount of the average projected payments per 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) Were the recipient to elect to pay off or refinance the commercial  
171 financing prior to full repayment, the provider must disclose: (A)  
172 whether the recipient would be required to pay any finance charges  
173 other than interest accrued since the recipient's last payment and, if so,

174 the percentage of any unpaid portion of the finance charge and the  
175 maximum dollar amount the recipient could be required to pay; and (B)  
176 whether the recipient would be required to pay any additional fees not  
177 already included in the finance charge.

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

180 Sec. 4. (NEW) (*Effective October 1, 2021*) A provider subject to the  
181 provisions of sections 1 to 10, inclusive, of this act shall provide to a  
182 recipient at the time of extending a specific offer for closed-end  
183 financing the following disclosures in a format prescribed by the  
184 Banking Commissioner:

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

188 (2) The finance charge.

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

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

197 (5) The term of the financing.

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

203 of payments, and, if the term is longer than one month, the estimated  
204 average monthly payment amount.

205 (7) A description of all other potential fees and charges that can be  
206 avoided by the recipient, including, but not limited to, late payment fees  
207 and returned payment fees.

208 (8) Were the recipient to elect to pay off or refinance the commercial  
209 financing prior to full repayment, the provider must disclose whether  
210 the recipient would be required to pay: (A) Any finance charges other  
211 than interest accrued since the recipient's last payment and, if so,  
212 disclosure of the percentage of any unpaid portion of the finance charge  
213 and maximum dollar amount the recipient could be required to pay; and  
214 (B) any additional fees not already included in the finance charge.

215 (9) A description of collateral requirements or security interests, if  
216 any.

217 Sec. 5. (NEW) (*Effective October 1, 2021*) A provider subject to the  
218 provisions of sections 1 to 10, inclusive, of this act shall provide to a  
219 recipient at the time of extending a specific offer for open-end financing  
220 the following disclosures in a format prescribed by the Banking  
221 Commissioner:

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

225 (2) The finance charge.

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



233 disclosed.

234 (4) The total repayment amount, which is the draw amount, less any  
235 fees deducted or withheld at disbursement, plus the finance charge. The  
236 total repayment amount shall assume a draw amount equal to the  
237 maximum amount of credit available to the recipient if drawn and held  
238 for the duration of the term or draw period.

239 (5) The term of the plan, if applicable, or the period over which a draw  
240 is amortized.

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

250 (7) A description of all other potential fees and charges that can be  
251 avoided by the recipient, including, but not limited to, draw fees, late  
252 payment fees and returned payment fees.

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

260 (9) A description of collateral requirements or security interests, if  
261 any.

262 Sec. 6. (NEW) (*Effective October 1, 2021*) A provider subject to the

263 provisions of sections 1 to 10, inclusive, of this act shall provide to a  
264 recipient at the time of extending a specific offer for a factoring  
265 transaction the following disclosures in a format prescribed by the  
266 Banking Commissioner:

267 (1) The amount of the receivables purchase price paid to the recipient  
268 and, if different from the purchase price, the amount disbursed to the  
269 recipient after any fees deducted or withheld at disbursement.

270 (2) The finance charge.

271 (3) The estimated annual percentage rate, using that term, calculated  
272 according to the federal Truth in Lending Act, Regulation Z, 12 CFR 55  
273 1026 Appendix J, as amended from time to time, as a single advance,  
274 single payment transaction. To calculate the estimated annual  
275 percentage rate, the purchase amount is considered the financing  
276 amount, the purchase amount minus the finance charge is considered  
277 the payment amount, and the term is established by the payment due  
278 date of the receivables. As an alternate method of establishing the term,  
279 the provider may estimate the term for a factoring transaction as the  
280 average payment period, its historical data over a period not to exceed  
281 the previous twelve months, concerning payment invoices paid by the  
282 party owing the accounts receivable in question.

283 (4) The total payment amount, which is the purchase amount plus the  
284 finance charge.

285 (5) A description of all other potential fees and charges that can be  
286 avoided by the recipient.

287 (6) A description of the receivables purchased and any additional  
288 collateral requirements or security interests.

289 Sec. 7. (NEW) (*Effective October 1, 2021*) The Banking Commissioner  
290 may require a provider extending a specific offer for commercial  
291 financing that is not open-end financing, closed-end financing, sales-  
292 based financing or a factoring transaction, but which otherwise meets

293 the definition of commercial financing as provided in section 1 of this  
294 act, to provide to a recipient at the time of extending such specific offer  
295 the following disclosures in the format prescribed by the Banking  
296 Commissioner:

297 (1) The total amount of the commercial financing and the  
298 disbursement amount, if different from the financing amount, after any  
299 fees deducted or withheld at disbursement.

300 (2) The finance charge.

301 (3) The annual percentage rate, using only the words "annual  
302 percentage rate" or the abbreviation "APR", expressed as a yearly rate,  
303 inclusive of any fees and finance charges, and calculated in accordance  
304 with the relevant sections of the federal Truth in Lending Act,  
305 Regulation Z or sections 1 to 10, inclusive, of this act.

306 (4) The total repayment amount which is the disbursement amount  
307 plus the finance charge.

308 (5) The term of the financing.

309 (6) The payment amounts, as follows: (A) For payment amounts that  
310 are fixed, the payment amounts and frequency, and the average  
311 monthly payment amount; or (B) for payment amounts that are variable,  
312 a payment schedule or a description of the method used to calculate the  
313 amounts and frequency of payments, and the estimated average  
314 monthly payment amount.

315 (7) A description of all other potential fees and charges that can be  
316 avoided by the recipient, including, but not limited to, late payment fees  
317 and returned payment fees.

318 (8) Were the recipient to elect to pay off or refinance the commercial  
319 financing prior to full repayment, the provider must disclose whether  
320 the recipient would be required to pay: (A) Any finance charges other  
321 than interest accrued since the recipient's last payment and, if so,

322 disclosure of the percentage of any unpaid portion of the finance charge  
323 and maximum dollar amount the recipient could be required to pay; and  
324 (B) any additional fees not already included in the finance charge.

325 (9) A description of collateral requirements or security interests, if  
326 any.

327 Sec. 8. (NEW) (*Effective October 1, 2021*) If as a condition of obtaining  
328 commercial financing the provider requires the recipient to pay off the  
329 balance of an existing commercial financing from the same provider, the  
330 provider must disclose to the recipient:

331 (1) The amount of the new commercial financing used to pay off the  
332 portion of the existing commercial financing that consists of prepayment  
333 charges required to be paid and any unpaid interest expense that was  
334 not forgiven at the time of renewal. For financing for which the total  
335 repayment amount is calculated as a fixed amount, the prepayment  
336 charge is equal to the original finance charge multiplied by the amount  
337 of the renewal used to pay off existing financing as a percentage of the  
338 total repayment amount, minus any portion of the total repayment  
339 amount forgiven by the provider at the time of prepayment. If the  
340 amount is more than zero, such amount shall be included in the  
341 disclosure as the answer to the following question and presented as  
342 follows: "Does the renewal financing include any amount that is used to  
343 pay unpaid finance charge or fees, also known as double dipping? Yes,  
344 (enter amount). If the amount is zero, the answer would be No."

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

348 Sec. 9. (NEW) (*Effective October 1, 2021*) The provider shall obtain the  
349 recipient's signature, which may be fulfilled by an electronic signature,  
350 on all disclosures required to be presented to the recipient pursuant to  
351 sections 1 to 10, inclusive, of this act before authorizing the recipient to  
352 proceed further with the commercial financing transaction application.

353 Sec. 10. (NEW) (*Effective October 1, 2021*) Nothing in sections 1 to 10,  
354 inclusive of this act shall prevent a provider from providing or  
355 disclosing additional information on a commercial financing being  
356 offered to a recipient, provided such additional information shall not be  
357 disclosed as part of the disclosure required by sections 1 to 10, inclusive,  
358 of this act. If other metrics of financing cost are disclosed or used in the  
359 application process of a commercial financing, these metrics shall not be  
360 presented as a "rate" if they are not the annual interest rate or the annual  
361 percentage rate. The term "interest", when used to describe a percentage  
362 rate, shall only be used to describe annualized percentage rates, such as  
363 the annual interest rate. When a provider states a rate of finance charge  
364 or a financing amount to a recipient during an application process for  
365 commercial financing, the provider shall also state the rate as an "annual  
366 percentage rate", using that term or the abbreviation "APR".

367 Sec. 11. (NEW) (*Effective October 1, 2021*) The Banking Commissioner  
368 may adopt regulations in accordance with chapter 54 of the general  
369 statutes to carry out the provisions of sections 1 to 10, inclusive, of this  
370 act.

371 Sec. 12. (NEW) (*Effective October 1, 2021*) (a) Any provider who  
372 violates any provision of sections 1 to 10, inclusive, of this act or any  
373 regulation adopted pursuant to section 11 of this act shall be liable for a  
374 civil penalty of not more than two thousand dollars for each violation  
375 or, in the case of a wilful violation, not more than ten thousand dollars  
376 for each violation.

377 (b) In addition to any penalty imposed pursuant to subsection (a) of  
378 this section, if the Banking Commissioner finds that a provider has  
379 knowingly violated any provision of sections 1 to 10, inclusive, of this  
380 act or any regulation adopted pursuant to section 11 of this act, the  
381 commissioner may order additional relief, including, but not limited to,  
382 a permanent or preliminary injunction on behalf of any recipient  
383 affected by the violation.

|   |                        |             |
|---|------------------------|-------------|
| This act shall take effect as follows and shall amend the following sections: |                        |             |
| Section 1   | <i>October 1, 2021</i> | New section |
| Sec. 2  | <i>October 1, 2021</i> | New section |
| Sec. 3  | <i>October 1, 2021</i> | New section |
| Sec. 4  | <i>October 1, 2021</i> | New section |
| Sec. 5  | <i>October 1, 2021</i> | New section |
| Sec. 6  | <i>October 1, 2021</i> | New section |
| Sec. 7  | <i>October 1, 2021</i> | New section |
| Sec. 8  | <i>October 1, 2021</i> | New section |
| Sec. 9  | <i>October 1, 2021</i> | New section |
| Sec. 10   | <i>October 1, 2021</i> | New section |
| Sec. 11   | <i>October 1, 2021</i> | New section |
| Sec. 12   | <i>October 1, 2021</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.]*

Co-Sponsors: SEN. ANWAR, 3rd Dist.; REP. TURCO, 27th Dist.

S.B. 745