OLR Bill Analysis

sSB 1032

AN ACT REQUIRING CERTAIN FINANCING DISCLOSURES.

SUMMARY

This bill requires certain lenders to disclose specific information on "commercial financing," which, under the bill, 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.

Under the bill, "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.

Among other things, lenders providing commercial financing must generally provide applicants the financing amount, finance charges, the annual percentage rate, the total repayment amount, the term, payment amounts, other potential fees, any prepayment costs, and a description of any collateral requirements.

Violations of the bill's provisions are subject to a civil penalty of up to $2,000 for each violation and up to $10,000 for each willful violation. The Department of Banking commissioner may seek injunctive relief or take other enforcement actions if he finds that a provider has knowingly violated these laws.

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

EFFECTIVE DATE: January 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. Under the bill, a "provider" excludes the following entities authorized to transact business in Connecticut: (1) federally or state-licensed, certified, or chartered banks; trust companies; and industrial loan companies; (2) federally chartered savings and loan associations, federal savings banks, and federal credit unions; and (3) state organized savings and loan associations, savings banks, and credit unions (i.e., "financial institutions").

Financial Institution Affiliates. For purposes of the bill, an "affiliate of a financial institution" is not a "provider." Under the bill, this is an entity controlled by, or under common control with, a financial institution, so that the financial institution (1) directly or indirectly, acting through one or more other people, owns, controls, or has the power to vote more than 50% of any class of voting securities of the affiliated entity; (2) controls, in any manner, the election of a majority of the directors or trustees of the affiliated entity; or (3) directly or indirectly exercises a controlling influence over the management or policies of the affiliated entity.

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 Defined

Under the bill, a "recipient" is anyone other than a "commercial financing broker" (i.e., anyone other than a "financer" who, for compensation or the expectation of compensation, offers or offers to obtain commercial financing 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; (2) all finance charges as defined under the federal Truth in Lending Act's (TILA's) Regulation Z (12 C.F.R. § 1026.4); and (3) any other charges the commissioner determines.

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

1. the total amount of the commercial financing, and the disbursement amount, if different from the financing amount, after any fees deducted or withheld at disbursement;

2. the estimated annual percentage rate (using the words "annual percentage rate" or the abbreviation "APR") expressed as a yearly rate, including any fees and finance charges and calculated in accordance with federal regulations under TILA (12 C.F.R. § 1026.22), based on the estimated term of repayment and projected periodic payment amounts calculated using the recipient's projected sales (see below);

3. the total repayment amount (i.e., disbursement amount plus finance charge);

4. the estimated term, which is the period of time required for the periodic payments to equal the total to be repaid based on the projected sales volume;

5. the payment amounts, based on projected sales volumes (see below), as well as (a) if payments are fixed, their frequency and, if other than monthly, the amount of the average projected payments per month; 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. the finance charges, if any, 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, if so, the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient may 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;

9. a clear and conspicuous disclosure if the commercial financing agreement includes a waiver of the recipient's right for a hearing about the attachment of the recipient's bank account, which must state that (a) the recipient has a right to the hearing if the provider pursues the attachment and (b) the waiver may result in the attachment of the recipient's bank account without a hearing; and

10. a statement disclosing whether, in connection with the specific offer, the provider will pay compensation directly to a commercial financing broker out of the financed amount and, if

so, the compensation amount.

Methods for Calculating Projected Sales Volume

The bill allows the projected sales volume to be calculated using the historical method or the opt-in method. It requires each provider to give notice to the commissioner, in a form and manner he chooses, about which method the provider intends to use to calculate the estimated annual percentage rates for sales-based financing offerings.

Historical Method. Under the historical method, a provider must use an average historical sales volume or revenue to determine the financing's payment amounts and the estimated APR. The provider must fix the historical time period used to calculate the average historical volume and use that period for all disclosure purposes for all sales-based financing products offered. The fixed historical time period must be (1) at least one month and no more than 12 months and (2) either the preceding time period from the specific offer or, alternatively, the average sales for the same number of months with the highest sales volume within the past 12 months.

Opt-In Method. Under the opt-in method, the provider must determine the estimated APR, the estimated term, and the projected payments using a projected sales volume that the provider elects for each disclosure.

Providers choosing this method must participate in a review process prescribed by the commissioner. Beginning October 1, 2024, they must annually report data to the commissioner disclosing the (1) estimated APRs they disclosed to recipients and (2) actual retrospective APRs of completed transactions. The report must contain information that the commissioner may prescribe as necessary or appropriate to determine whether the deviation between the estimated APR and the actual retrospective APRs of completed transactions was reasonable.

The commissioner must establish the reporting method and may, upon his finding that the use of projected sales volume by the provider has resulted in an unacceptable deviation between the estimated and

actual APR, require the provider to use the historical method. As part of making this finding, the commissioner may consider unusual and extraordinary circumstances impacting the provider's deviation between estimated and actual APR.

§ 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 consist 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 (1) the original finance charge, (2) multiplied by the amount of the renewal used to pay off existing financing as a percentage of the total repayment amount, (3) less any portion of the total repayment amount forgiven by the provider at the time of prepayment. If this amount is more than zero, the amount must be included in the disclosure as the answer to the following question and presented as follows: "Does the renewal financing include any amount that is used to pay unpaid finance charges or fees, also known as double dipping? Yes, (enter amount). If the amount is zero, the answer would be No."

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 — DISCLOSURE SIGNATURE REQUIREMENT

The bill requires each provider to obtain a recipient's signature on all of the above disclosures before authorizing the recipient to proceed further with the commercial financing transaction application.

Electronic signatures are allowed under the bill.

§ 6 — DISCLOSING ADDITIONAL INFORMATION

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.

The bill prohibits providing other information on financing costs during the application process as a rate unless it is the annual interest rate or the APR. It further requires that the term "interest," when used to describe a percentage rate, must only be used to describe annualized percentage rates such as the annual interest rate. Additionally, when a provider states the rate of a finance charge or a financing amount to a recipient during an application process, the provider must also state the rate as an annual percentage rate, using that term or the abbreviation "APR."

§ 7 — ACCEPTING DISCLOSURES FROM OTHER STATES

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.

§ 8 — IMPLEMENTING REGULATIONS

The bill authorizes the commissioner to adopt regulations to carry out the bill's provisions.

§ 9 — PENALTIES

The bill subjects a provider who violates any of its provisions or the implementing regulations to a civil penalty of up to $2,000 for each violation and up to $10,000 for each willful violation. 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)