



Senate

General Assembly

File No. 196

January Session, 2023

Substitute Senate Bill No. 1032

Senate, March 23, 2023

The Committee on Banking reported through SEN. MILLER of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

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	<i>January 1, 2024</i>	New section
Sec. 2	<i>January 1, 2024</i>	New section
Sec. 3	<i>January 1, 2024</i>	New section
Sec. 4	<i>January 1, 2024</i>	New section
Sec. 5	<i>January 1, 2024</i>	New section
Sec. 6	<i>January 1, 2024</i>	New section
Sec. 7	<i>January 1, 2024</i>	New section
Sec. 8	<i>January 1, 2024</i>	New section
Sec. 9	<i>January 1, 2024</i>	New section

Statement of Legislative Commissioners:

In Section 1, "sections 1 to 9" was changed to "this section and sections 2 to 9" for consistency with standard drafting conventions; in Section 2,

"the provider may rely on" was changed to "a provider may rely on" and "The provider shall not" was changed to "A provider shall not" for consistency and clarity; in Section 3(3), "the projection of the recipient's sales" was changed to "a projection of the recipient's sales" for clarity; Section 3(8)(A) was redrafted for clarity and consistency; in Section 3(11), "A statement disclosing whether" was changed to "Whether" for internal consistency; and in Section 6, "sections 1 to 6" was changed to "this section or sections 1 to 5" for consistency with standard drafting conventions.

BA *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 24 \$	FY 25 \$
Banking Dept.	BF - Potential Revenue Gain	See Below	See Below

Note: BF=Banking Fund

Municipal Impact: None

Explanation

The bill requires certain lenders to disclose information on commercial financing transactions and allows the Department of Banking to adopt implementing regulations, resulting in a potential revenue gain to the Banking Fund.

Violations of the bill's provisions are subject to a civil penalty of up to \$10,000, resulting in a potential revenue gain depending on the number of penalties and the fines imposed. The department currently has the expertise to create the applicable regulations.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of penalties and the fines imposed.

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)