



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
2 and 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
9 of 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
21 dollar amount, including (A) any charge payable directly or indirectly
22 by the recipient and imposed directly or indirectly by the provider as
23 an incident to, or a condition of, the extension of financing, (B) all
24 charges that would be included under the definition of "finance
25 charge" in 12 CFR 1026.4, as amended from time to time, as if the
26 transaction were subject to said section, and (C) any other charge as
27 determined by the 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
33 with, a license, certificate or charter issued by the United States, this
34 state or any other state, district, territory or commonwealth of the
35 United States, (B) a federally chartered savings and loan association,
36 federal savings bank or federal credit union that is authorized to
37 transact business in this state, or (C) a savings and loan association,
38 savings bank or credit union, organized under the laws of this or any
39 other state, that is 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
48 institution, (B) person acting in such person's capacity as a technology
49 services provider to an entity exempt under this section for use as part

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

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

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

83 is a percentage of sales or revenue; and

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

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

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

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

107 (2) The finance charge.

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

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

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

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

147 reasonable. The commissioner shall establish the method of reporting
148 and may, upon a finding by the commissioner that the use of projected
149 sales volume by the provider has resulted in an unacceptable deviation
150 between the estimated and actual annual percentage rates, require the
151 provider to use the historical method. The commissioner may consider
152 unusual and extraordinary circumstances impacting the provider's
153 deviation between estimated and actual annual percentage rates in
154 making such finding.

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

157 (5) The estimated time period required for the periodic payments to
158 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:

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

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

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

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

177 the recipient will be required to pay; and

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

181 (9) A description of collateral requirements or security interests, if
182 any.

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

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

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

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

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

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

206 total repayment amount forgiven by the provider at the time of
207 prepayment. If the amount is more than zero, such amount shall be
208 included in the disclosure as the answer to the following question and
209 presented as follows: "Does the renewal financing include any amount
210 that is used to pay unpaid finance charges or fees, also known as
211 double dipping? Yes, (enter amount). If the amount is zero, the answer
212 would be No."

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

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

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

237 Sec. 7. (NEW) (*Effective January 1, 2024*) If the Banking

238 Commissioner determines that the laws of another state require
 239 commercial financing disclosures that meet or exceed the commercial
 240 financing disclosure requirements established under sections 1 to 6,
 241 inclusive, of this act, any commercial financing disclosure form that
 242 such other state approves for the purposes of complying with such
 243 other state's commercial financing disclosure laws may be used for the
 244 purposes of complying with the commercial financing disclosure
 245 requirements established under sections 1 to 6, inclusive, of this act.

246 Sec. 8. (NEW) (*Effective January 1, 2024*) The Banking Commissioner
 247 may adopt regulations, in accordance with the provisions of chapter 54
 248 of the general statutes, to carry out the provisions of sections 1 to 9,
 249 inclusive, of this act.

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

256 (b) In addition to any civil penalty imposed under subsection (a) of
 257 this section, if the Banking Commissioner finds that a provider has
 258 knowingly violated any provision of sections 1 to 7, inclusive, of this
 259 act or any regulation adopted pursuant to section 8 of this act, the
 260 commissioner may seek an injunction in a court of competent
 261 jurisdiction, and may exercise the powers granted to the commissioner
 262 under section 36a-50 of the general statutes, on behalf of any recipient
 263 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.*