



General Assembly

Amendment

January Session, 2023

LCO No. 7458



Offered by:

SEN. MILLER P., 27th Dist.
REP. DOUCETTE, 13th Dist.
SEN. BERTHEL, 32nd Dist.
REP. DELNICKI, 14th Dist.

To: Subst. Senate Bill No. 1032

File No. 196

Cal. No. 136

"AN ACT REQUIRING CERTAIN FINANCING DISCLOSURES."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective July 1, 2024*) As used in this section and
4 sections 2 to 12, inclusive, of this act:

5 (1) "Affiliate of a financial institution" means an entity that is
6 controlled by, or is under common control with, a financial institution,
7 such that the financial institution (A) directly or indirectly, acting
8 through one or more other persons, owns, controls or has the power to
9 vote more than fifty per cent of any class of voting securities of the
10 affiliated entity, (B) controls, in any manner, the election of a majority of
11 the directors or trustees of the affiliated entity, or (C) directly or
12 indirectly exercises a controlling influence over the management or
13 policies of the affiliated entity;

14 (2) "Commercial financing" means any extension of sales-based
15 financing in an amount not exceeding two hundred fifty thousand
16 dollars, the proceeds of which the recipient does not intend to use
17 primarily for personal, family or household purposes;

18 (3) "Commercial financing broker" means a person, other than a
19 financier, who, for compensation or the expectation of compensation,
20 offers, or offers to obtain, commercial financing for a recipient from a
21 provider that is not exempt;

22 (4) "Finance charge" means the cost of financing expressed as a dollar
23 amount, including (A) any charge payable directly or indirectly by the
24 recipient and imposed directly or indirectly by the provider as an
25 incident to, or a condition of, the extension of financing, and (B) all
26 charges that would be included under the definition of "finance charge"
27 in 12 CFR 1026.4, as amended from time to time, as if the transaction
28 were subject to said section;

29 (5) "Financer" means a person who provides, or will provide,
30 commercial financing to a recipient;

31 (6) "Financial institution" means (A) a bank, trust company or
32 industrial loan company that is authorized to transact business in this
33 state and is doing business under the authority of, or in accordance with,
34 a license, certificate or charter issued by the United States, this state or
35 any other state, district, territory or commonwealth of the United States,
36 (B) a federally chartered savings and loan association, federal savings
37 bank or federal credit union that is authorized to transact business in
38 this state, or (C) a savings and loan association, savings bank or credit
39 union, organized under the laws of this or any other state, that is
40 authorized to transact business in this state;

41 (7) "Person" means an individual, corporation, partnership, limited
42 liability company, joint venture, association, joint stock company, trust
43 or unincorporated organization, including, but not limited to, a sole
44 proprietorship;

45 (8) "Provider" means a person who extends a specific offer of
46 commercial financing to a recipient and includes, unless otherwise
47 exempt under this section, a commercial financing broker, but does not
48 include any (A) financial institution or affiliate of a financial institution,
49 (B) person acting in such person's capacity as a technology services
50 provider to an entity exempt under this section for use as part of the
51 exempt entity's commercial financing program, provided such person
52 has no interest, arrangement or agreement to purchase any interest in
53 the commercial financing extended by the exempt entity in connection
54 with such program, (C) lender regulated under the federal Farm Credit
55 Act, 12 USC 2001 et seq., as amended from time to time, (D) person or
56 provider who extends or brokers a commercial financing transaction
57 secured by real property, (E) person or provider who extends or brokers
58 a lease, as defined in section 42a-2A-102 of the general statutes, (F)
59 person or provider who extends or brokers a purchase-money
60 obligation, as defined in section 42a-9-103a of the general statutes, (G)
61 person or provider who extends not more than five commercial
62 financing transactions in this state in a twelve-month period, (H) person
63 or provider who extends or brokers a commercial financing transaction
64 entered into pursuant to a commercial financing agreement or
65 commercial open-end credit plan of at least fifty thousand dollars, in
66 which the recipient is (i) a dealer, as defined in section 14-1 of the general
67 statutes, or an affiliate of such a dealer, or (ii) a motor vehicle rental
68 company, or an affiliate of such a company, or (I) person or provider
69 who extends or brokers a commercial financing transaction in
70 connection with the sale of products or services that such person or
71 provider manufactures, licenses or distributes, or whose parent
72 company, subsidiary or affiliate 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 financing,
85 including, but not limited to, a price or amount, that is quoted to a
86 recipient based on information obtained from or about the recipient,
87 which, if accepted by the recipient, would be binding on the provider,
88 subject to any specific requirements stated in such terms.

89 Sec. 2. (NEW) (*Effective July 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 in
93 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 July 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 any
106 fees are deducted or withheld at disbursement.

107 (2) The finance charge.

108 (3) The total repayment amount, which is the disbursement amount
109 plus the finance charge.

110 (4) The estimated time period required for the periodic payments to
111 equal the total amount required to be repaid.

112 (5) The payment amounts as follows:

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

116 (B) For payment amounts that are variable, a payment schedule or a
117 description of the method used to calculate the amounts and frequency
118 of payments, and the amount of the average projected payments per
119 month.

120 (6) A description of all other potential fees and charges not included
121 in the finance charge, including, but not limited to, draw fees, late
122 payment fees and returned payment fees.

123 (7) (A) Any finance charge the recipient will be required to pay if the
124 recipient elects to pay off or refinance the commercial financing prior to
125 full repayment, other than interest accrued since the recipient's last
126 payment, and the percentage of any unpaid portion of such finance
127 charge and the maximum dollar amount of such finance charge the
128 recipient will be required to pay; and

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

132 (8) A description of collateral requirements or security interests, if
133 any.

134 (9) Whether, in connection with the specific offer of sales-based
135 financing, the provider will pay compensation directly to a commercial
136 financing broker out of the financed amount and, if so, the amount of
137 such compensation.

138 Sec. 4. (NEW) (*Effective July 1, 2024*) If as a condition of obtaining

139 commercial financing the provider requires the recipient to pay off the
140 balance of existing commercial financing from the same provider, the
141 provider shall disclose to the recipient:

142 (1) The amount of the new commercial financing used to pay off the
143 portion of the existing commercial financing that consists of prepayment
144 charges required to be paid and any unpaid interest expense that was
145 not forgiven at the time of renewal. For financing for which the total
146 repayment amount is calculated as a fixed amount, the prepayment
147 charge is equal to the original finance charge multiplied by the amount
148 of the renewal used to pay off existing financing as a percentage of the
149 total repayment amount, minus any portion of the total repayment
150 amount forgiven by the provider at the time of prepayment.

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

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

159 Sec. 6. (NEW) (*Effective July 1, 2024*) Nothing in this section or sections
160 1 to 5, inclusive, of this act shall prevent a provider from providing or
161 disclosing additional information concerning commercial financing
162 offered to a recipient, provided such additional information shall not be
163 disclosed as part of any disclosure required pursuant to this section or
164 sections 1 to 5, inclusive, of this act.

165 Sec. 7. (NEW) (*Effective July 1, 2024*) If the Banking Commissioner
166 determines that the laws of another state require commercial financing
167 disclosures that meet or exceed the commercial financing disclosure
168 requirements established under sections 1 to 6, inclusive, of this act, any
169 commercial financing disclosure form that such other state approves for
170 the purposes of complying with such other state's commercial financing

171 disclosure laws may be used for the purposes of complying with the
172 commercial financing disclosure requirements established under
173 sections 1 to 6, inclusive, of this act.

174 Sec. 8. (NEW) (*Effective July 1, 2024*) No commercial financing contract
175 entered into on or after July 1, 2024, shall contain any provision waiving
176 a recipient's right to notice, judicial hearing or prior court order under
177 chapter 903a of the general statutes in connection with the provider
178 obtaining any prejudgment remedy, including, but not limited to,
179 attachment, execution, garnishment or replevin, upon commencing any
180 litigation against the recipient. Any such provision in a commercial
181 financing contract entered into on or after July 1, 2024, shall be
182 unenforceable.

183 Sec. 9. (NEW) (*Effective July 1, 2024*) A provider shall not revoke,
184 withdraw or modify a specific offer made on or after July 1, 2024, until
185 midnight of the third calendar day after the date of the specific offer,
186 except that a specific offer may state that it is based on the provider's
187 preliminary review of application information only and is not a final
188 approval or commitment to provide sales-based financing.

189 Sec. 10. (NEW) (*Effective July 1, 2024*) (a) Not later than October 1,
190 2024, each provider and commercial financing broker shall: (1) Register
191 with the Banking Commissioner in a manner prescribed by the
192 commissioner; and (2) unless such provider or broker is organized
193 under the laws of this state or is otherwise not required to obtain
194 authority to transact business in this state as a foreign entity, shall obtain
195 authority to transact business in this state.

196 (b) An application for registration by a provider or commercial
197 financing broker shall disclose any judgment, memorandum of
198 understanding, cease and desist order or conviction that involves a
199 crime or an act of fraud, breach of trust or money laundering with
200 respect to such provider or broker or any officer, director, manager,
201 operator or individual who otherwise controls the operations of such
202 provider or broker.

203 (c) Each provider and commercial financing broker shall pay an
 204 initial registration fee of one thousand dollars and an annual
 205 registration fee of five hundred dollars by the fifteenth of September
 206 each year thereafter. If a provider or commercial financing broker fails
 207 to timely pay any such annual registration fee, its registration shall
 208 automatically expire by operation of law.

209 Sec. 11. (NEW) (*Effective July 1, 2024*) The Banking Commissioner may
 210 adopt regulations, in accordance with the provisions of chapter 54 of the
 211 general statutes, to carry out the provisions of sections 1 to 12, inclusive,
 212 of this act.

213 Sec. 12. (NEW) (*Effective July 1, 2024*) (a) Any provider who violates
 214 any provision of sections 1 to 10, inclusive, of this act or any regulation
 215 adopted pursuant to section 11 of this act shall be liable for a civil
 216 penalty not to exceed two thousand dollars per violation.

217 (b) In addition to any civil penalty imposed under subsection (a) of
 218 this section, if the Banking Commissioner finds that a provider has
 219 knowingly violated any provision of sections 1 to 10, inclusive, of this
 220 act or any regulation adopted pursuant to section 11 of this act, the
 221 commissioner may seek an injunction in a court of competent
 222 jurisdiction, and may exercise the powers granted to the commissioner
 223 under section 36a-50 of the general statutes, on behalf of any recipient
 224 affected by the violation."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2024</i>	New section
Sec. 2	<i>July 1, 2024</i>	New section
Sec. 3	<i>July 1, 2024</i>	New section
Sec. 4	<i>July 1, 2024</i>	New section
Sec. 5	<i>July 1, 2024</i>	New section
Sec. 6	<i>July 1, 2024</i>	New section
Sec. 7	<i>July 1, 2024</i>	New section
Sec. 8	<i>July 1, 2024</i>	New section
Sec. 9	<i>July 1, 2024</i>	New section

Sec. 10	<i>July 1, 2024</i>	New section
Sec. 11	<i>July 1, 2024</i>	New section
Sec. 12	<i>July 1, 2024</i>	New section