

[First Reprint]

SENATE SUBSTITUTE FOR  
**SENATE, No. 2262**

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**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

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ADOPTED OCTOBER 29, 2018

**Sponsored by:**  
**Senator TROY SINGLETON**  
**District 7 (Burlington)**

**SYNOPSIS**

Requires certain disclosures by providers of small business financing.

**CURRENT VERSION OF TEXT**

As amended by the Senate on December 17, 2018.



1 AN ACT concerning small business financing and supplementing  
2 P.L.1964, c.162 (C.17:9A-59.25 et seq.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. As used in this act:

8 “Asset-based transaction” means a transaction in which advances  
9 are made from time to time contingent on a small business concern  
10 forwarding payments received from one or more third parties for  
11 goods the small business concern has supplied or services the small  
12 business concern has rendered to that third party or parties.

13 <sup>1</sup>“Broker” means a person who, for or in expectation of  
14 consideration:

15 (1) arranges or offers to arrange small business financing for a  
16 small business concern; or

17 (2) assists or advises or offers to assist or advise a small  
18 business concern in obtaining or attempting to obtain a small  
19 business financing.

20 Notwithstanding the above definition, “broker” does not include  
21 a provider when referring a small business concern to another  
22 provider.<sup>1</sup>

23 “Commissioner” means the Commissioner of Banking and  
24 Insurance.

25 “Factoring” means an accounts receivable purchase transaction  
26 that includes an <sup>1</sup>agreement to purchase future receivables or  
27 receipts or an<sup>1</sup> agreement to purchase, transfer, or sell a legally  
28 enforceable claim for payment held by a small business concern for  
29 goods the small business concern has supplied or services the small  
30 business concern has rendered that have been ordered but for which  
31 payment has not yet been made.

32 “Provider” means a person who extends a specific offer of small  
33 business financing to a small business concern located in this State.  
34 “Provider” shall also include a non-depository institution, which  
35 enters into a written agreement with a depository institution to  
36 arrange for the extension of small business financing by the  
37 depository institution to a small business concern via an online  
38 lending platform administered by the non-depository institution.

39 “Small business financing” means a loan, line of credit, or a  
40 factoring or asset-based transaction made for a business purpose  
41 <sup>1</sup>[in the] with a<sup>1</sup> principal amount <sup>1</sup>or maximum credit limit<sup>1</sup> of  
42 \$500,000 or less.

43

44 2. Notwithstanding any other law to the contrary, a provider

**EXPLANATION** – Matter enclosed in bold-faced brackets **[ thus ]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate floor amendments adopted December 17, 2018.

1 that extends small business financing to a small business concern  
2 located in this State shall, at the time the contract is offered, provide  
3 the following disclosures to the small business concern, as  
4 applicable:

5 a. (1) for a closed-end loan, the total dollar costs to be charged  
6 to a borrower, assuming the borrower pays the loan according to its  
7 original payment schedule, plus all required fees and charges that  
8 cannot be avoided by the borrower, including any fees deducted or  
9 amounts withheld at disbursement;

10 (2) for an open-end loan, the total dollar costs to be charged to a  
11 borrower, plus all required periodic and non-periodic fees and  
12 charges that cannot be avoided by a borrower. The total dollar  
13 costs shall be disclosed for the amount scheduled to be drawn by  
14 the borrower at the time of disclosure, as well as for the maximum  
15 draw amount of credit available under the open-end loan; or

16 (3) for a factoring or asset-based transaction, the total dollar  
17 costs to be charged to a small business concern, assuming the small  
18 business concern delivers all purchased receivables to providers at  
19 the time they are generated or at a mutually agreed upon time, plus  
20 all required fees and charges that are paid by the small business  
21 concern and that<sup>1</sup> cannot be avoided by the small business concern;

22 b. (1) for a closed-end loan, the annual percentage rate,  
23 expressed as a nominal yearly rate, inclusive of any fees and  
24 finance charges;

25 (2) for an open-end loan, the estimated annual percentage rate.  
26 In providing an estimated annual percentage rate, the rate shall be  
27 calculated using the daily, weekly, or monthly payments from the  
28 small business concern that are assumed by the provider in the  
29 underwriting process. The disclosure shall state that the estimated  
30 annual percentage rate is intended as a good faith estimate, and may  
31 not be accurate if the business repays more quickly or slowly than  
32 the estimated term; or

33 (3) for a factoring or asset-based transaction, the factor rate,  
34 expressed as a decimal, and the factoring commission rate,  
35 expressed as a percentage of sales or claims, including any  
36 minimum or maximum payment amounts;

37 c.<sup>1</sup> the finance charge, expressed as a dollar cost, which shall  
38 mean the amount of any and all costs of small business financing,  
39 including interest, transaction fees, origination fees, and any third  
40 party fees that are paid by the small business concern and that<sup>1</sup>  
41 cannot be avoided by the small business concern. The finance  
42 charge shall assume the small business concern repays the small  
43 business financing in its entirety according to the agreed upon  
44 original payment schedule. For a factoring or asset-based  
45 transaction, or small business financing that is fee-based, the  
46 disclosure required pursuant to this subsection may be provided as  
47 narrative explanation, formula, representative examples, or a  
48 methodology;

1       <sup>1</sup>**[c.] d.**<sup>1</sup> (1) for a closed-end loan, the amount financed,  
2 which shall mean the total loan amount less any prepaid finance  
3 charges for the closed-end loan, including any fees deducted or  
4 amounts withheld at disbursement;

5       (2) for an open-end loan, the borrowing limits, which shall mean  
6 the maximum credit limit available to the small business concern,  
7 and, if applicable, the amount scheduled to be drawn by the  
8 borrower at the time of disclosure; or

9       (3) for a factoring or asset-based transaction, the amount  
10 financed, which shall mean the advance amount less any prepaid  
11 finance charges;

12       <sup>1</sup>**[d.] e.**<sup>1</sup> (1) for payment amounts that are fixed, the payment  
13 schedule, which shall include the payment, amounts, and frequency  
14 of payments scheduled to repay the obligation, which amounts shall  
15 include principal, interest, and any other unavoidable finance  
16 charges incurred after closing; or

17       (2) for payment amounts that are variable, a description of the  
18 method used to calculate payment amounts and frequency of  
19 payments;

20       <sup>1</sup>**[e.] f.**<sup>1</sup> if the <sup>1</sup>contract with the provider requires the<sup>1</sup> small  
21 business concern <sup>1</sup>**[will] to**<sup>1</sup> pay or be liable to pay a fee <sup>1</sup>directly<sup>1</sup>  
22 to any <sup>1</sup>broker or other<sup>1</sup> third party with respect to the small  
23 business financing, a description of that fee;

24       <sup>1</sup>**[f.] g.**<sup>1</sup> a description of the prepayment policies, including  
25 any fees, expenses or charges due when the small business  
26 financing is paid in full;

27       <sup>1</sup>**[g.] h.**<sup>1</sup> if not otherwise provided in writing to the small  
28 business concern, notice that the <sup>1</sup>**[lender] provider**<sup>1</sup> has acquired  
29 or will acquire a security interest in the collateral and a description  
30 of the collateral; and

31       <sup>1</sup>**[h.] i.**<sup>1</sup> a description of any other fees or charges that can be  
32 avoided by the small business concern, including, but not limited to,  
33 draw fees, late payment fees, and returned payment fees.

34       <sup>1</sup>Nothing in this section shall prevent a provider from providing  
35 additional disclosure information on financing being offered to a  
36 small business concern.<sup>1</sup>

37  
38       3. For purposes of determining whether financing is made for a  
39 business purpose within the meaning of this act, a provider  
40 extending financing shall obtain a written statement of intended  
41 purposes signed by the small business concern. The statement may  
42 be a separate statement signed by the small business concern or may  
43 be contained in a <sup>1</sup>**[loan] financing**<sup>1</sup> application or other document  
44 signed by the small business concern. The provider shall not be  
45 required to determine whether the proceeds of the small business  
46 financing are used in accordance with the statement of intended  
47 purposes.

1 <sup>1</sup>4. Notwithstanding any other law to the contrary, a broker shall

2 provide a written disclosure to the small business concern and to the

3 provider stating the total dollar amount of fees charged to the small

4 business concern by the broker in connection with a small business

5 financing. The broker must provide this disclosure in a document

6 separate from the provider's contract with the small business

7 concern prior to the consummation of the small business financing

8 transaction.<sup>1</sup>

9

10 <sup>1</sup>~~4.~~ 5.<sup>1</sup> The commissioner shall promulgate regulations

11 pursuant to the "Administrative Procedure Act," P.L.1968, c.410

12 (C.52:14B-1 et seq.) to provide that, in addition to the disclosures

13 required to be provided to a small business concern pursuant to

14 section 2 of this act, a provider that extends small business

15 financing shall, as applicable and appropriate under the terms of the

16 small business financing, notify the small business concern before

17 any change that significantly affects <sup>1</sup>~~the responsibilities or~~

18 ~~obligations of the small business concern under the financing~~ any

19 of the disclosures required to be provided pursuant to section 2 of

20 this act<sup>1</sup>.

21

22 <sup>1</sup>~~5.~~ 6.<sup>1</sup> a. A provider <sup>1</sup>~~or broker~~<sup>1</sup> that violates any provision

23 of this act <sup>1</sup>, as determined by a court of competent jurisdiction,<sup>1</sup>

24 shall be liable to a civil penalty of not more than <sup>1</sup>~~[\$5,000 for a first~~

25 ~~offense, or]~~<sup>1</sup> \$10,000 <sup>1</sup>~~[for a second or any subsequent offense]~~

26 regardless of the number of small business concerns subject to that

27 violation<sup>1</sup>. If the court determines that a provider or broker

28 knowingly violated any provision of this act, the provider shall be

29 liable to a civil penalty of not more than \$10,000 for each small

30 business concern subject to the violation.<sup>1</sup> The penalty shall be

31 collected by the commissioner in the name of the State <sup>1</sup>~~[in a~~

32 ~~summary proceeding]~~<sup>1</sup> in accordance with the "Penalty

33 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

34 b. In addition to any penalty imposed pursuant to subsection a.

35 of this section, upon a finding <sup>1</sup>~~by a court of competent jurisdiction~~<sup>1</sup>

36 that a provider <sup>1</sup>~~or broker~~<sup>1</sup> has violated this act, the

37 <sup>1</sup>~~[commissioner]~~ court<sup>1</sup> may order additional relief, including, but

38 not limited to, a permanent or preliminary injunction or an order for

39 payment of restitution on behalf of any small business concern

40 injured by the provider <sup>1</sup>~~or on behalf of any small business concern~~

41 or provider injured by a broker<sup>1</sup>.

42 c. Any small business concern <sup>1</sup>~~or provider~~<sup>1</sup> which is subject to

43 any violation of this act may bring an action against the provider <sup>1</sup>~~or~~

44 ~~broker~~<sup>1</sup> and recover a civil penalty, as provided in subsection a. of

45 this section<sup>1</sup>, if the court finds the provider or broker knowingly

46 violated this act<sup>1</sup>.

1 d. The remedies provided by this section shall not be exclusive,  
2 and may be pursued in addition to any other penalties provided by  
3 law.

4  
5 <sup>1</sup>~~6.~~ 7.<sup>1</sup> a. This act shall not apply to:

6 (1) an insured depository institution, which is defined pursuant  
7 to 12 U.S.C. <sup>1</sup>~~1813(c)(2)~~ s.1813(c)(2)<sup>1</sup> to mean any bank or  
8 savings association the deposits of which are insured by the Federal  
9 Deposit Insurance Corporation <sup>1</sup>~~;~~<sup>1</sup> or <sup>1</sup>any institution-affiliated  
10 party, as defined pursuant to 12 U.S.C. s.1813(u);<sup>1</sup>

11 (2) <sup>1</sup>an insured credit union, which is defined pursuant to 12  
12 U.S.C. s.1752 to mean any credit union the deposits of which are  
13 insured by the National Credit Union Administration's National  
14 Credit Union Share Insurance Fund or any credit union service  
15 organization, as defined in 12 C.F.R. s.704.11; or

16 (3)<sup>1</sup> a commercial equipment lease or loan financing agreement  
17 entered into pursuant to chapter 2A or chapter 9 of Title 12A of the  
18 New Jersey Statutes.

19 b. The fact that a provider extends access to a specific offer of  
20 small business financing or lending on behalf of a depository  
21 institution shall not be construed to mean that the provider engaged  
22 in lending or originated that loan or financing.

23  
24 <sup>1</sup>~~7.~~ 8.<sup>1</sup> This act shall take effect on the 145th day next  
25 following the date of enactment, except the commissioner may take  
26 any anticipatory administrative action in advance as shall be  
27 necessary for the implementation of this act.