

[Second Reprint]

SENATE SUBSTITUTE FOR
SENATE, No. 2262

STATE OF NEW JERSEY
218th LEGISLATURE

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 January 31, 2019.



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 ¹“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.¹

23 ²“Cash advance” means a financing option that allows a small
24 business concern to sell all or a portion of its future sales
25 collections or other future revenues in exchange for an immediate
26 payment.²

27 “Commissioner” means the Commissioner of Banking and
28 Insurance.

29 “Factoring” means an accounts receivable purchase transaction
30 that includes an ¹agreement to purchase future receivables or
31 receipts or an¹ agreement to purchase, transfer, or sell a legally
32 enforceable claim for payment held by a small business concern for
33 goods the small business concern has supplied or services the small
34 business concern has rendered ²[that have been ordered but]² for
35 which payment has not yet been made.

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

43 “Small business financing” means a loan, line of credit, or a

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:

¹ Senate floor amendments adopted December 17, 2018.

² Senate floor amendments adopted January 31, 2019.

1 factoring or asset-based transaction made for a business purpose
2 ¹in the with a¹ principal amount ¹or maximum credit limit¹ of
3 \$500,000 or less.

4

5 2. Notwithstanding any other law to the contrary, a provider
6 that extends small business financing to a small business concern
7 located in this State shall, at the time the contract is offered, provide
8 the following disclosures to the small business concern, as
9 applicable:

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

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

21 (3) ²(a)² for a factoring ²or asset-based² transaction, the
22 ²total dollar costs to be charged to a small business concern,
23 assuming the small business concern delivers all purchased
24 receivables to providers at the time they are generated or at a
25 mutually agreed upon time, plus purchase price expressed as a
26 percentage of the amount of the purchased receivable, and² all
27 required fees and charges that ¹are paid by the small business
28 concern and that¹ cannot be avoided by the small business concern;
29 ²or

30 (b) for an asset-based transaction, the advanced rates, expressed
31 as a percentage of the amount of the receivable or other asset
32 supporting the transaction and all required fees and charges that are
33 paid by the small business concern and that cannot be avoided by
34 the small business concern; or

35 (4) for a cash advance, total dollar costs to be charged to a small
36 business concern, assuming the small business concern delivers all
37 purchased receivables to providers at the time they are generated or
38 at a mutually agreed upon time, and all required fees and charges
39 that are paid by the small business concern and that cannot be
40 avoided by the small business concern;²

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

44 (2) for an open-end loan, the estimated annual percentage rate.
45 In providing an estimated annual percentage rate, the rate shall be
46 calculated using the daily, weekly, or monthly payments from the
47 small business concern that are assumed by the provider in the
48 underwriting process. The disclosure shall state that the estimated

1 annual percentage rate is intended as a good faith estimate, and may
2 not be accurate if the business repays more quickly or slowly than
3 the estimated term; ²[or]²

4 (3) for a factoring or asset-based transaction, ²as applicable,²
5 the factor rate, expressed as a decimal, and the factoring
6 commission rate, expressed as a percentage of sales or claims,
7 including any minimum or maximum payment amounts ²or the
8 interest rate index and spread applicable to the transaction; or

9 (4) (a) for a cash advance that calculates repayment costs
10 dependent on the small business concern's future receivables, the
11 estimated annual percentage rate, provided as a range, with at least
12 three different repayment times provided and a narrative
13 explanation of how each rate was derived. Any estimated annual
14 percentage rate provided pursuant to this subparagraph shall be
15 calculated using a projected sales volume that is based on the small
16 business concern's average historical sales, or the sales projections
17 relied on by the provider in underwriting. Any estimated annual
18 percentage rate provided pursuant to this paragraph shall be
19 accompanied by a disclosure stating that the estimated annual
20 percentage rate is intended as a good faith estimate, and may not be
21 accurate if the business repays more quickly or slowly than the
22 estimated term; or

23 (b) for a cash advance that calculates repayment costs as a fixed
24 payment, the annual percentage rate, expressed as a nominal yearly
25 rate, inclusive of any fees and finance charges²;

26 c.¹ the finance charge, expressed as a dollar cost, which shall
27 mean the amount of any and all costs of small business financing,
28 including interest, transaction fees, origination fees, and any third
29 party fees that ¹are paid by the small business concern and that¹
30 cannot be avoided by the small business concern. The finance
31 charge shall assume the small business concern repays the small
32 business financing in its entirety according to the agreed upon
33 original payment schedule. For a factoring or asset-based
34 transaction, or small business financing that is fee-based, the
35 disclosure required pursuant to this subsection may be provided as
36 narrative explanation, formula, representative examples, or a
37 methodology;

38 ¹[c.] d.¹ (1) for a closed-end loan, the amount financed,
39 which shall mean the total loan amount less any prepaid finance
40 charges for the closed-end loan, including any fees deducted or
41 amounts withheld at disbursement;

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

46 (3) for a factoring or asset-based transaction, ²or a cash
47 advance,² the amount financed, which shall mean the advance
48 amount less any prepaid finance charges;

1 ¹**[d.] e.**¹ (1) for payment amounts that are fixed, the payment
2 schedule, which shall include the payment, amounts, and frequency
3 of payments scheduled to repay the obligation, which amounts shall
4 include principal, interest, and any other unavoidable finance
5 charges incurred after closing; or

6 (2) for payment amounts that are variable, a description of the
7 method used to calculate payment amounts and frequency of
8 payments;

9 ¹**[e.] f.**¹ if the ¹contract with the provider requires the¹ small
10 business concern ¹**[will] to**¹ pay or be liable to pay a fee ¹directly¹
11 to any ¹broker or other¹ third party with respect to the small
12 business financing, a description of that fee;

13 ¹**[f.] g.**¹ a description of the prepayment policies, including
14 any fees, expenses or charges due when the small business
15 financing is paid in full;

16 ¹**[g.] h.**¹ if not otherwise provided in writing to the small
17 business concern, notice that the ¹**[lender] provider**¹ has acquired
18 or will acquire a security interest in the collateral and a description
19 of the collateral; and

20 ¹**[h.] i.**¹ a description of any other fees or charges that can be
21 avoided by the small business concern, including, but not limited to,
22 draw fees, late payment fees, and returned payment fees.

23 ¹Nothing in this section shall prevent a provider from providing
24 additional disclosure information on financing being offered to a
25 small business concern.¹

26
27 3. For purposes of determining whether financing is made for a
28 business purpose within the meaning of this act, a provider
29 extending financing shall obtain a written statement of intended
30 purposes signed by the small business concern. The statement may
31 be a separate statement signed by the small business concern or may
32 be contained in a ¹**[loan] financing**¹ application or other document
33 signed by the small business concern. The provider shall not be
34 required to determine whether the proceeds of the small business
35 financing are used in accordance with the statement of intended
36 purposes.

37
38 ¹4. Notwithstanding any other law to the contrary, a broker shall
39 provide a written disclosure to the small business concern and to the
40 provider stating the total dollar amount of fees charged to the small
41 business concern by the broker in connection with a small business
42 financing. The broker must provide this disclosure in a document
43 separate from the provider's contract with the small business
44 concern prior to the consummation of the small business financing
45 transaction.¹

46
47 ¹**[4.] 5.**¹ The commissioner shall promulgate regulations
48 pursuant to the "Administrative Procedure Act," P.L.1968, c.410

1 (C.52:14B-1 et seq.) to provide that, in addition to the disclosures
2 required to be provided to a small business concern pursuant to
3 section 2 of this act, a provider that extends small business
4 financing shall, as applicable and appropriate under the terms of the
5 small business financing, notify the small business concern before
6 any change that significantly affects ¹~~the responsibilities or~~
7 ~~obligations of the small business concern under the financing~~ any
8 of the disclosures required to be provided pursuant to section 2 of
9 this act¹.

10

11 ¹~~[5.] 6.~~¹ a. A provider ¹~~or broker~~¹ that violates any provision
12 of this act ¹, as determined by a court of competent jurisdiction,¹
13 shall be liable to a civil penalty of not more than ¹~~[\$5,000 for a first~~
14 ~~offense, or]~~¹ \$10,000 ¹~~for a second or any subsequent offense]~~
15 regardless of the number of small business concerns subject to that
16 violation¹. ¹If the court determines that a provider or broker
17 knowingly violated any provision of this act, the provider shall be
18 liable to a civil penalty of not more than \$10,000 for each small
19 business concern subject to the violation.¹ The penalty shall be
20 collected by the commissioner in the name of the State ¹~~in a~~
21 ~~summary proceeding]~~¹ in accordance with the "Penalty
22 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

23 b. In addition to any penalty imposed pursuant to subsection a.
24 of this section, upon a finding ¹by a court of competent jurisdiction¹
25 that a provider ¹~~or broker~~¹ has violated this act, the
26 ¹~~commissioner~~ court¹ may order additional relief, including, but
27 not limited to, a permanent or preliminary injunction or an order for
28 payment of restitution on behalf of any small business concern
29 injured by the provider ¹~~or on behalf of any small business concern~~
30 or provider injured by a broker¹.

31 c. Any small business concern ¹~~or provider~~¹ which is subject to
32 any violation of this act may bring an action against the provider ¹~~or~~
33 ~~broker~~¹ and recover a civil penalty, as provided in subsection a. of
34 this section¹, if the court finds the provider or broker knowingly
35 violated this act¹.

36 d. The remedies provided by this section shall not be exclusive,
37 and may be pursued in addition to any other penalties provided by
38 law.

39

40 ¹~~[6.] 7.~~¹ a. This act shall not apply to:

41 (1) an insured depository institution, which is defined pursuant
42 to 12 U.S.C. ¹~~[1813(c)(2)]~~ s.1813(c)(2)¹ to mean any bank or
43 savings association the deposits of which are insured by the Federal
44 Deposit Insurance Corporation ¹~~;~~¹ or ¹any institution-affiliated
45 party, as defined pursuant to 12 U.S.C. s.1813(u);¹

46 (2) ¹an insured credit union, which is defined pursuant to 12
47 U.S.C. s.1752 to mean any credit union the deposits of which are

1 insured by the National Credit Union Administration's National
2 Credit Union Share Insurance Fund or any credit union service
3 organization, as defined in 12 C.F.R. s.704.11; or

4 (3)¹ a commercial equipment lease or loan financing agreement
5 entered into pursuant to chapter 2A or chapter 9 of Title 12A of the
6 New Jersey Statutes.

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

11
12 ¹**[7.] 8.**¹ This act shall take effect on the 145th day next
13 following the date of enactment, except the commissioner may take
14 any anticipatory administrative action in advance as shall be
15 necessary for the implementation of this act.