

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 2262

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 15, 2018

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 2262.

This bill supplements the “Small Business Loan Act” by applying certain disclosure provisions of the federal “Truth in Lending Act” (TILA) to certain loans made to small businesses in the State.

Although banks have traditionally provided the majority of small business loans, other non-bank lenders, including online marketplace lenders, have moved into the market for small business loans. While TILA requires disclosures to individual consumers who take out loans, this bill expands protections to small businesses as the lending industry goes through this transformation, by placing TILA disclosure requirements on any entity providing a small business loan in an amount of \$100,000 or less to a business located in the State.

Specifically, the bill requires, notwithstanding any other law to the contrary, any entity that provides a small business loan to a small business concern located in the State, in an amount of \$100,000 or less, to provide all of the following disclosures about the loan to the small business concern:

(1) the interest rate, expressed as a nominal yearly rate, exclusive of any fees or charges.

(2) the finance charge, which shall mean the amount of any and all costs of small business credit, including interest, transaction fees, origination fees, and any third party fees.

(3) (a) for a term loan, the amount financed, which shall mean the total loan amount less any prepaid finance charges for term credit; and

(b) for a revolving credit loan, the borrowing limits, which shall mean the maximum credit limit available to the small business concern.

(4) the payment schedule, which shall include the number, amounts, and timing of payments scheduled to repay the obligation, which amounts shall include principal, interest, and any other finance charges incurred after closing.

(5) the minimum payment required to be paid toward the outstanding amount to meet the terms and conditions of the small business loan, and an estimate of the time to pay off the outstanding amount, along with the cost of any interest incurred by making a minimum payment.

(6) any third party agreements entered into between the entity that provides the small business loan and any broker or other third party involved in the loan, any fees paid pursuant to their involvement, and a description of their relationships and any conflicts of interests.

The bill also requires these disclosures to be provided at the time that the small business loan is offered to the small business concern and prior to the small business concern's acceptance of the loan.

In addition, an entity providing a small business loan shall, as applicable and appropriate under the terms of the small business loan, notify a small business concern at least 45 days before the effective date of any increase in the annual percentage rate of the loan and any other change that significantly affects the responsibilities or obligations of the small business concern under the loan.

Finally, the bill provides that any other entity that violates any provision of the bill shall be subject to the penalties set forth in the "Small Business Loan Act."

The bill does not apply to any FDIC-insured bank or savings association, or to any commercial equipment lease financing agreement.

COMMITTEE AMENDMENTS

The committee amended the bill to:

- Exempt FDIC-insured banks and savings associations and commercial equipment lease financing agreements from the provisions of the bill.
- Include merchant cash advances and working capital loans offered by payment processors as small business loans that are covered by the disclosure provisions of the bill, and defines those terms.
- Remove a requirement of the bill requiring entities to disclose the annual percentage rate, expressed as a nominal yearly rate, inclusive of any fees and finance charges.