

STATEMENT TO

SENATE, No. 2262

with Senate Floor Amendments
(Proposed by Senator SINGLETON)

ADOPTED: DECEMBER 17, 2018

The amendments require that brokers who arrange or offer to arrange small business financing or assist or advise a small business concern in obtaining financing for consideration must provide a written disclosure to the small business concern and to the provider stating the total dollar amount of fees charged to the small business concern by the broker. The broker must provide this disclosure in a document separate from the provider's contract with the small business concern, prior to the consummation of the small business financing transaction.

The amendments provide that nothing in the bill prevents a provider from providing additional disclosure information on financing being offered to a small business concern.

The amendments include an accounts receivable purchase transaction that includes an agreement to purchase future receivables or receipts in the definition of factoring.

The amendments require providers that extend small business financing to disclose:

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

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

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

The amendments require the Commissioner of Banking and Insurance to promulgate regulations to require providers that extend small business financing to notify small business concerns before any change that significantly affects any of the disclosures otherwise required under the bill.

The amendments change the penalties available under the bill to provide for a \$10,000 penalty against providers that violate the provisions of the bill, regardless of the number of small business concerns subject to that violation. If the commissioner demonstrates

that a provider knowingly violated any provision of the bill, the provider is liable to a civil penalty of not more than \$10,000 for each small business concern subject to the violation.

The amendments also exempt the following parties from the requirements of the bill: insured depository institution-affiliated parties; credit unions insured by the National Credit Union Administration's National Credit Union Share Insurance Fund; and credit union service organizations.