

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

Substitute as adopted by the Senate.



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 “Commissioner” means the Commissioner of Banking and
14 Insurance.

15 “Factoring” means an accounts receivable purchase transaction
16 that includes an agreement to purchase, transfer, or sell a legally
17 enforceable claim for payment held by a small business concern for
18 goods the small business concern has supplied or services the small
19 business concern has rendered that have been ordered but for which
20 payment has not yet been made.

21 “Provider” means a person who extends a specific offer of small
22 business financing to a small business concern located in this State.

23 “Provider” shall also include a non-depository institution, which
24 enters into a written agreement with a depository institution to
25 arrange for the extension of small business financing by the
26 depository institution to a small business concern via an online
27 lending platform administered by the non-depository institution.

28 “Small business financing” means a loan, line of credit, or a
29 factoring or asset-based transaction made for a business purpose in
30 the principal amount of \$500,000 or less.

31

32 2. Notwithstanding any other law to the contrary, a provider
33 that extends small business financing to a small business concern
34 located in this State shall, at the time the contract is offered, provide
35 the following disclosures to the small business concern, as
36 applicable:

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

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

- 1 (3) for a factoring or asset-based transaction, the total dollar
2 costs to be charged to a small business concern, assuming the small
3 business concern delivers all purchased receivables to providers at
4 the time they are generated or at a mutually agreed upon time, plus
5 all required fees and charges that cannot be avoided by the small
6 business concern;
- 7 b. the finance charge, expressed as a dollar cost, which shall
8 mean the amount of any and all costs of small business financing,
9 including interest, transaction fees, origination fees, and any third
10 party fees that cannot be avoided by the small business concern.
11 The finance charge shall assume the small business concern repays
12 the small business financing in its entirety according to the agreed
13 upon original payment schedule. For a factoring or asset-based
14 transaction, or small business financing that is fee-based, the
15 disclosure required pursuant to this subsection may be provided as
16 narrative explanation, formula, representative examples, or a
17 methodology;
- 18 c. (1) for a closed-end loan, the amount financed, which shall
19 mean the total loan amount less any prepaid finance charges for the
20 closed-end loan, including any fees deducted or amounts withheld
21 at disbursement;
- 22 (2) for an open-end loan, the borrowing limits, which shall mean
23 the maximum credit limit available to the small business concern,
24 and, if applicable, the amount scheduled to be drawn by the
25 borrower at the time of disclosure; or
- 26 (3) for a factoring or asset-based transaction, the amount
27 financed, which shall mean the advance amount less any prepaid
28 finance charges;
- 29 d. (1) for payment amounts that are fixed, the payment
30 schedule, which shall include the payment, amounts, and frequency
31 of payments scheduled to repay the obligation, which amounts shall
32 include principal, interest, and any other unavoidable finance
33 charges incurred after closing; or
- 34 (2) for payment amounts that are variable, a description of the
35 method used to calculate payment amounts and frequency of
36 payments;
- 37 e. if the small business concern will pay or be liable to pay a
38 fee to any third party with respect to the small business financing, a
39 description of that fee;
- 40 f. a description of the prepayment policies, including any fees,
41 expenses or charges due when the small business financing is paid
42 in full;
- 43 g. if not otherwise provided in writing to the small business
44 concern, notice that the lender has acquired or will acquire a
45 security interest in the collateral and a description of the collateral;
46 and

1 h. a description of any other fees or charges that can be avoided
2 by the small business concern, including, but not limited to, draw
3 fees, late payment fees, and returned payment fees.

4
5 3. For purposes of determining whether financing is made for a
6 business purpose within the meaning of this act, a provider
7 extending financing shall obtain a written statement of intended
8 purposes signed by the small business concern. The statement may
9 be a separate statement signed by the small business concern or may
10 be contained in a loan application or other document signed by the
11 small business concern. The provider shall not be required to
12 determine whether the proceeds of the small business financing are
13 used in accordance with the statement of intended purposes.

14
15 4. The commissioner shall promulgate regulations pursuant to
16 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
17 seq.) to provide that, in addition to the disclosures required to be
18 provided to a small business concern pursuant to section 2 of this
19 act, a provider that extends small business financing shall, as
20 applicable and appropriate under the terms of the small business
21 financing, notify the small business concern before any change that
22 significantly affects the responsibilities or obligations of the small
23 business concern under the financing.

24
25 5. a. A provider that violates any provision of this act shall be
26 liable to a civil penalty of not more than \$5,000 for a first offense,
27 or \$10,000 for a second or any subsequent offense. The penalty
28 shall be collected by the commissioner in the name of the State in a
29 summary proceeding in accordance with the "Penalty Enforcement
30 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

31 b. In addition to any penalty imposed pursuant to subsection a.
32 of this section, upon a finding that a provider has violated this act,
33 the commissioner may order additional relief, including, but not
34 limited to, a permanent or preliminary injunction or an order for
35 payment of restitution on behalf of any small business concern
36 injured by the provider.

37 c. Any small business concern which is subject to any violation
38 of this act may bring an action against the provider and recover a
39 civil penalty, as provided in subsection a. of this section.

40 d. The remedies provided by this section shall not be exclusive,
41 and may be pursued in addition to any other penalties provided by
42 law.

43
44 6. a. This act shall not apply to:

45 (1) an insured depository institution, which is defined pursuant
46 to 12 U.S.C. 1813(c)(2) to mean any bank or savings association the
47 deposits of which are insured by the Federal Deposit Insurance
48 Corporation; or

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

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

7. This act shall take effect on the 145th day next following the date of enactment, except the commissioner may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act.

STATEMENT

This bill, a floor substitute for Senate Bill No. 2262(1R), requires certain providers of small business financing to provide disclosures to small business concerns.

Under the bill, “provider” is defined to mean a person who extends a specific offer of small business financing to a small business concern located in this State. “Provider” also includes a non-depository institution, which enters into a written agreement with a depository institution to arrange for the extension of small business financing by the depository institution to a small business concern via an online lending platform administered by the non-depository institution.

The bill requires providers that extend small business financing to a small business concern located in this State to provide, at the time the contract is offered, the following disclosures to the small business concern, as applicable:

(1) for a closed-end loan, the total dollar costs to be charged to a borrower, assuming the borrower pays the loan according to its original payment schedule, plus all required fees and charges that cannot be avoided by the borrower;

(2) for an open-end loan, the total dollar costs to be charged to a borrower, plus all required periodic and non-periodic fees and charges that cannot be avoided by a borrower; or

(3) for a factoring or asset-based transaction, the total dollar costs to be charged to a small business concern, assuming the small business concern delivers all purchased receivables to providers at the time they are generated or at a mutually agreed upon time, plus all required fees and charges that cannot be avoided by the small business concern;

The bill requires the provider to disclose the finance charge, expressed as a dollar cost, which means the amount of any and all costs of small business financing, including interest, transaction fees, origination fees, and any third party fees that cannot be

1 avoided by the small business concern. For a factoring or asset-
2 based transaction, or small business financing that is fee-based, the
3 disclosure may be provided as narrative explanation, formula,
4 representative examples, or a methodology.

5 The bill requires providers to make the following disclosures
6 concerning the amount financed by a small business concern:

7 (1) for a closed-end loan, the amount financed, including any
8 fees deducted or amounts withheld at disbursement;

9 (2) for an open-end loan, the borrowing limits, and, if
10 applicable, the amount scheduled to be drawn by the borrower at the
11 time of disclosure; or

12 (3) for a factoring or asset-based transaction, the amount
13 financed.

14 Providers are required to disclose, for payment amounts that are
15 fixed, the payment schedule, or, for payment amounts that are
16 variable, a description of the method used to calculate payment
17 amounts and frequency of payments.

18 The bill also requires providers to make the following
19 disclosures:

20 (1) if the small business concern will pay or be liable to pay a
21 fee to any third party with respect to the small business financing, a
22 description of that fee;

23 (2) a description of the prepayment policies, including any fees,
24 expenses or charges due when the small business financing is paid
25 in full;

26 (3) if not otherwise provided in writing to the small business
27 concern, notice that the lender has acquired or will acquire a
28 security interest in the collateral and a description of the collateral;
29 and

30 (4) a description of any other fees or charges that can be avoided
31 by the small business concern.

32 The bill requires providers extending financing to obtain a
33 written statement of intended purposes signed by the small business
34 concern for purposes of determining whether financing is made for
35 a business purpose.

36 Under the bill, the commissioner is required to promulgate
37 regulations to provide that providers that extend small business
38 financing must notify small business concerns before any change
39 that significantly affects the responsibilities or obligations of the
40 small business concern under the financing.

41 Providers that violate any provision of the bill are liable to a civil
42 penalty of not more than \$5,000 for a first offense, or \$10,000 for a
43 second or any subsequent offense. Upon a finding that a provider
44 has violated the provisions of the bill, the commissioner may order
45 additional relief, including, but not limited to, a permanent or
46 preliminary injunction or an order for payment of restitution on
47 behalf of any small business concern injured by the provider.

1 Any small business concern which is subject to any violation of
2 the bill may bring an action against the provider and recover a civil
3 penalty.

4 The bill does not apply to:

5 (1) depository institutions which are insured by the Federal
6 Deposit Insurance Corporation; or

7 (2) certain commercial equipment lease or loan financing
8 agreements.