

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR SENATE, No. 233

STATE OF NEW JERSEY

DATED: JUNE 16, 2021

The Senate Commerce Committee reports favorably the Senate Committee Substitute for Senate Bill No. 233.

This committee substitute requires certain providers of commercial financing to provide disclosures to recipients.

Under the bill, "provider" is defined to mean a person who extends a specific offer of commercial financing to a recipient and includes a person who solicits and presents specific offers of commercial financing on behalf of a third party. The bill provides that "recipient" means a person, or the authorized representative of a person, who applies for commercial financing and is made a specific offer of commercial financing by a provider, but does not include a person acting as a broker. Pursuant to the bill, "commercial financing" is defined to mean open-end financing, closed-end financing, sales-based financing, factoring transaction, or any other form of financing, the proceeds of which the recipient does not intend to use primarily for personal, family, or household purposes.

The bill requires a provider to, at the time of extending a specific offer of commercial financing that is a sales-based, closed-end, or open-end financing, or a factoring transaction, make certain disclosures to the recipient in a form and manner to be determined by the Commissioner of Banking and Insurance. The required disclosures vary by the type of commercial financing or factoring transaction, and include, but are not limited to:

- (1) the finance charge;
- (2) the estimated annual percentage rate, using the words "annual percentage rate" or the abbreviation "APR", expressed as a yearly rate, inclusive of any fees and finance charges, and calculated in accordance with section 1026.22 of Subpart C of Regulation Z (12 C.F.R. s.1026.22) of the federal "Truth in Lending Act" (15 U.S.C. s.1601 et seq.) and according to certain tolerances and requirements;
- (3) the total repayment amount;
- (4) a description of all other potential fees and charges; and
- (5) a description of collateral requirements or security interests, if any.

The bill also provides that the commissioner may require by regulation a provider extending a specific offer of commercial

financing that is not open-end financing, closed-end financing, sales-based financing, or a factoring transaction but otherwise meets the definition of commercial financing pursuant to the bill to make certain disclosures to the recipient that are delineated in the bill.

Under the bill, in addition to other disclosures required pursuant to the bill, a broker who charges any fees or commission that would be paid by the recipient of the financing shall provide, at the time of extending a specific offer for a commercial financing transaction and in a form and manner prescribed by the commissioner, a written disclosure, in a document separate from the provider's contract with the recipient, stating the following, if the information is not contained within the disclosure offered by the provider directly to the recipient:

(1) a list of all fees or commissions that would be paid to the broker by the recipient in connection with the commercial financing;

(2) the total dollar amount of charges listed pursuant to the bill; and

(3) any increase to the annual percentage rate due to the charges listed above and the resulting dollar cost.

The bill requires a provider to obtain the recipient's written or electronic signature on all disclosures required to be presented to the recipient pursuant to the bill before authorizing the recipient to proceed further with the commercial financing transaction application. Under the bill, a provider is not required to obtain the recipient's signature on any disclosure for a commercial financing transaction that is not consummated. When a provider provides multiple disclosures to a recipient during the negotiation of a commercial financing transaction that is ultimately consummated, the provider need only obtain the recipient's signature on the final disclosure that corresponds to the consummated transaction.

Nothing in this bill prevents a provider from disclosing additional information on a commercial financing being offered to a recipient but additional information is not to be disclosed as part of the disclosure required pursuant to the bill. The information required to be disclosed pursuant to subsections a. through i. of section 6 of the bill is to appear in the disclosure document before any additional information is disclosed by a provider, and is to be in larger font and visually separated from the additional disclosure information. If other metrics of financing cost are disclosed or used in the application process of a commercial financing, the metrics are not to be presented as a "rate" if they are not the annual interest rate or the annual percentage rate. The term "interest," when used to describe a percentage rate, is only to be used to describe an annualized percentage rate, including, but not limited to, the annual interest rate. When a provider states a rate of finance charge or a financing amount to a recipient during an application process for commercial financing, the provider is to state the rate as an "annual percentage rate," using that term or the abbreviation "APR."

The bill provides that a provider is not to be liable for any failure to comply with any requirement imposed by the bill, if within 60 days after discovering an error, and prior to the institution of a civil action by a recipient or the receipt of written notice of the error from the recipient, the provider notifies the recipient of the error and makes whatever adjustments are necessary to assure that the recipient will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower. A provider is to reimburse the recipient in the event an amount was paid by the recipient in excess of the charge actually owed.

A provider or financier is not to be liable for inadvertently disclosing a finance charge, annual percentage rate, periodic payment or irregular payment, average monthly cost, maximum non-interest finance charge, or prepayment fee or charge that exceeds the amount of information that the provider is required to disclose under the bill.

The bill requires the commissioner to promulgate regulations concerning the calculation or determination of any metric required to be disclosed to a recipient; and to develop and prescribe the form and manner in which a provider is to make a disclosure pursuant to the bill, which form and manner shall allow recipients to easily compare financing options, in a clear and conspicuous manner.

A provider or broker that violates any provision of the bill, as determined by the commissioner, is to be liable to a civil penalty of not more than \$2,000 for each violation, or not more than \$10,000 for each willful violation. In addition, upon a finding by the commissioner that a provider or broker has knowingly violated the provisions of the bill, the commissioner may order additional relief, including, but not limited to, a permanent or preliminary injunction on behalf of any recipient affected by the violation. A recipient or provider that is subject to a violation of the bill may bring an action against the provider or broker and recover a civil penalty if the court finds the provider or broker knowingly violated the provisions of the bill.

The bill does not apply to:

- (1) a financial institution;
- (2) a lender regulated under the federal "Farm Credit Act" (12 U.S.C. s.2001 et seq.);
- (3) a commercial financing transaction secured by real property;
- (4) a lease as defined in N.J.S.12A:2A-103;
- (5) a person or provider who makes not more than five commercial financing transactions in this State in a 12 month period; or
- (6) an individual commercial financing transaction in an amount over \$500,000 dollars.