

ASSEMBLY, No. 865

STATE OF NEW JERSEY

221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

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SYNOPSIS

Requires certain disclosures by providers of commercial financing.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 3/4/2024)

1 AN ACT concerning commercial 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 "Broker" means a person who, for or in expectation of
9 consideration:

10 (1) arranges or offers to arrange commercial financing for a
11 recipient; or

12 (2) assists or advises or offers to assist or advise a recipient in
13 obtaining or attempting to obtain a commercial financing.

14 Notwithstanding the above definition, "broker" does not include
15 a provider when referring a recipient to another provider, or a
16 provider that enters into a written agreement with a financial
17 institution to arrange for the extension of commercial financing by
18 the financial institution to a recipient via an online lending platform
19 administered by the provider.

20 "Closed-end financing" means a closed-end extension of credit,
21 secured or unsecured and including equipment financing, that does
22 not meet the definition of a lease as that term is defined in
23 N.J.S.12A:2A-103 and the proceeds of which the recipient does not
24 intend to use primarily for personal, family, or household purposes.
25 "Closed-end financing" includes financing with an established
26 principal amount and duration.

27 "Commercial financing" means open-end financing, closed-end
28 financing, sales-based financing, factoring transaction, or any other
29 form of financing, the proceeds of which the recipient does not
30 intend to use primarily for personal, family, or household purposes.

31 "Commissioner" means the Commissioner of Banking and
32 Insurance.

33 "Factoring transaction" means an accounts receivable purchase
34 transaction that includes an agreement to purchase, transfer, or sell
35 a legally enforceable claim for payment held by a recipient for
36 goods that the recipient has supplied or services that the recipient
37 has rendered that have been ordered but for which payment has not
38 yet been made.

39 "Finance charge" means the cost of financing as a dollar amount.
40 "Finance charge" includes any charge payable directly or indirectly
41 by the recipient and imposed directly or indirectly by the provider
42 as an incident to or a condition of the extension of financing. It
43 includes all charges that would be included under 12 C.F.R.
44 s.1026.4 as if the transaction were subject to 12 C.F.R. s.1026.4.
45 "Finance charge" also includes any charges as determined by the
46 commissioner. As it relates to an open-end financing, the finance
47 charge shall assume the maximum amount of credit available to the
48 recipient, in each case, is drawn and held for the duration of the

1 term or draw period. For the purposes of a factoring transaction, the
2 finance charge includes the discount taken on the face value of the
3 accounts receivable.

4 "Financial institution" means any of the following:

5 (1) a bank, trust company, or industrial loan company that is
6 doing business under the authority of, or in accordance with, a
7 license, certificate or charter issued by the United States, this State,
8 or any other state, district, territory, or commonwealth of the United
9 States;

10 (2) a federally chartered savings and loan association, federal
11 savings bank, federal credit union that is authorized to transact
12 business in this State, or any credit union service organization, as
13 defined in 12 C.F.R. s.704.11; or

14 (3) a savings and loan association, savings bank, or credit union
15 that is authorized to transact business in this State and that is
16 organized under the laws of this or any other state.

17 "Open-end financing" means an agreement for one or more
18 extensions of open-end credit, secured or unsecured, the proceeds of
19 which the recipient does not intend to use primarily for personal,
20 family, or household purposes. "Open-end financing" includes
21 credit extended by a provider under a plan in which:

22 (1) the provider reasonably contemplates repeated transactions;

23 (2) the provider may impose a finance charge from time to time
24 on an outstanding unpaid balance; and

25 (3) the amount of credit that may be extended to the recipient
26 during the term of the plan, up to any limit set by the provider, is
27 generally made available to the extent that any outstanding balance
28 is repaid.

29 "Person" means an individual, sole proprietor or other
30 unincorporated organization, association, joint venture, partnership,
31 limited partnership association, limited liability company,
32 corporation, trust, or joint stock company.

33 "Provider" means a person who extends a specific offer of
34 commercial financing to a recipient. Except as otherwise provided
35 in this act, "provider" also includes a person, including a broker
36 who solicits and presents specific offers of commercial financing on
37 behalf of a third party.

38 "Recipient" means a person, or the authorized representative of a
39 person, who applies for commercial financing and is made a
40 specific offer of commercial financing by a provider. "Recipient"
41 shall not include a person acting as a broker.

42 "Sales-based financing" means a transaction that is repaid by the
43 recipient to the provider, over time and as a percentage of sales or
44 revenue, in which the payment amount may increase or decrease
45 according to the volume of sales made or revenue received by the
46 recipient. "Sales-based financing" includes a true-up mechanism
47 where the financing is repaid as a fixed payment but provides for a

1 reconciliation process that adjusts the payment to an amount that is
2 a percentage of sales or revenue.

3 "Specific offer" means the specific terms of commercial
4 financing, including price or amount, that is quoted to a recipient,
5 based on information obtained from, or about, the recipient which,
6 if accepted by a recipient, shall be binding on the provider, as
7 applicable, subject to any specific requirements stated in the terms.
8 Where a provider allows a recipient to choose from various offers,
9 "specific offer" shall mean the specific offer the recipient elects to
10 pursue.

11

12 2. A provider shall, at the time of extending a specific offer of
13 sales-based financing in a form and manner prescribed by the
14 commissioner, disclose to the recipient:

15 a. the total amount of the commercial financing, and the
16 disbursement amount, if different from the financing amount, after
17 any fees deducted or withheld at disbursement;

18 b. the finance charge;

19 c. the estimated annual percentage rate, using the words annual
20 percentage rate or the abbreviation "APR", expressed as a yearly
21 rate, inclusive of any fees and finance charges, and calculated in
22 accordance with section 1026.22 of Subpart C of Regulation Z
23 (12 C.F.R. s.1026.22) of the federal "Truth in Lending Act"
24 (15 U.S.C. s.1601 et seq.) based on the estimated term of repayment
25 and the projected periodic payment amounts. The provider shall
26 clearly disclose the estimated annual percentage rate as an estimate,
27 and may include additional statements informing the recipient that
28 the actual annual percentage rate may vary depending on actual
29 time to repay. The estimated term of repayment and the projected
30 periodic payment amounts shall be calculated based on the
31 projected sales volume, which is the projection of the recipient's
32 sales. The projected sales volume may be calculated using the
33 historical method or the opt-in method. The provider shall provide
34 notice to the commissioner on which method the provider will use
35 across all instances of sales-based financing offered in calculating
36 estimated annual percentage rate pursuant to this section. In
37 calculating the projected sales volume:

38 (1) a provider using the historical method shall use an average
39 historical volume of sales or revenue by which the financing's
40 payment amounts are based and by which the estimated annual
41 percentage rate is calculated. The provider shall fix the historical
42 time period used to calculate the average historical volume and use
43 that period for all disclosure purposes for all sales-based financing
44 products offered. The fixed historical time period shall be either the
45 preceding time period from the specific offer or the average sales
46 for the same number of months with the highest sales volume
47 within the past twelve months. The fixed historical time period shall
48 be not less than one month and not more than twelve months; and

1 (2) a provider using the opt-in method shall determine the
2 estimated annual percentage rate, the estimated term, and the
3 projected payments, using a projected sales volume that the
4 provider elects for each disclosure. The provider using the opt-in
5 method shall participate in a review process to be determined by the
6 commissioner. A provider shall annually issue a report to the
7 commissioner, in a form and manner to be determined by the
8 commissioner, of estimated annual percentage rates disclosed to the
9 recipient and actual retrospective annual percentage rates of
10 completed transactions. The report shall contain information that
11 the commissioner determines necessary or appropriate to make a
12 determination of whether the deviation between the estimated
13 annual percentage rate and actual retrospective annual percentage
14 rates of completed transactions was reasonable. The commissioner
15 may, upon a finding that the use of projected sales volume by the
16 provider has resulted in an unacceptable deviation between
17 estimated and actual annual percentage rate, require the provider to
18 use the historical method. The commissioner may consider unusual
19 and extraordinary circumstances impacting the provider's deviation
20 between estimated and actual annual percentage rate in the
21 determination of such a finding;

22 d. the total repayment amount, which is the disbursement
23 amount plus the finance charge;

24 e. the estimated term, which is the period of time required for
25 the payments, based on the projected sales volume, to equal the
26 total amount required to be repaid;

27 f. the payment amounts, based on the projected sales volume.
28 The disclosure shall include, for payment amounts that are:

29 (1) fixed, the payment amounts and frequency and, if the
30 payment frequency is other than monthly, the amount of the average
31 projected payments per month; or

32 (2) variable, a payment schedule or a description of the method
33 used to calculate the amounts and frequency of payments, and the
34 amount of the average projected payments per month;

35 g. a description of all other potential fees and charges not
36 included in the finance charge, including, but not limited to, draw
37 fees, late payment fees, returned payment fees, and fees owed a
38 broker or other third party;

39 h. if the recipient were to elect to pay off or refinance the
40 commercial financing prior to full repayment:

41 (1) whether the recipient would be required to pay any finance
42 charges other than interest accrued since the recipient's last
43 payment and, if so, the percentage of any unpaid portion of the
44 finance charge and maximum dollar amount the recipient could be
45 required to pay; and

46 (2) whether the recipient would be required to pay any
47 additional fees not already included in the finance charge; and

- 1 i. a description of collateral requirements or security interests,
2 if any.
3
- 4 3. A provider shall, at the time of extending a specific offer of
5 closed-end financing, that is not otherwise considered sales-based
6 financing, in a form and manner prescribed by the commissioner,
7 disclose to the recipient:
- 8 a. the total amount of the commercial financing, and the
9 disbursement amount, if different from the financing amount, after
10 any fees deducted or withheld at disbursement;
- 11 b. the finance charge;
- 12 c. The annual percentage rate, using only the words “annual
13 percentage rate” or the abbreviation "APR", expressed as a yearly
14 rate, inclusive of any fees and finance charges that cannot be
15 avoided by a recipient, and calculated in accordance with section
16 1026.22 of Subpart C of Regulation Z (12 C.F.R. s.1026.22) of the
17 federal “Truth in Lending Act” (15 U.S.C. s.1601 et seq.). In
18 calculating the annual percentage rate:
- 19 (1) the annual percentage rate shall be determined in accordance
20 with either the actuarial method or the United States Rule method.
21 Explanations, equations and instructions for determining the annual
22 percentage rate in accordance with the actuarial method are set forth
23 in appendix J to part 1026 of Subpart C of Regulation Z (12 C.F.R.
24 s.1026) of the federal “Truth in Lending Act” (15 U.S.C. s.1601 et
25 seq.). An error in disclosure of the annual percentage rate or finance
26 charge shall not, in itself, be considered a violation of this act if:
- 27 (a) the error resulted from a corresponding error in a calculation
28 tool used in good faith by the creditor; and
- 29 (b) upon discovery of the error, the creditor promptly
30 discontinues use of that calculation tool for disclosure purposes and
31 notifies the Department of Banking and Insurance in writing of the
32 error in the calculation tool;
- 33 (2) the annual percentage rate shall be considered accurate if it
34 is not more than 1/8 of 1 percentage point above or below the
35 annual percentage rate determined in accordance with paragraph (1)
36 of this subsection; and
- 37 (3) in an irregular transaction, the annual percentage rate shall
38 be considered accurate if it is not more than 1/4 of 1 percentage
39 point above or below the annual percentage rate determined in
40 accordance with paragraph (1) of this subsection. For purposes of
41 this paragraph, an irregular transaction is one that includes one or
42 more of the following features: multiple advances, irregular
43 payment periods, or irregular payment amounts, other than an
44 irregular first period or an irregular first or final payment;
- 45 d. the total repayment amount, which is the disbursement
46 amount plus the finance charge;
- 47 e. the term of the financing;

- 1 f. the payment amounts. The disclosure shall include, for
2 payment amounts that are:
- 3 (1) fixed, the payment amounts and frequency, and, if the term
4 is longer than one month, the average monthly payment amount; or
5 (2) variable, a full payment schedule or a description of the
6 method used to calculate the amounts and frequency of payments,
7 and, if the term is longer than one month, the estimated average
8 monthly payment amount;
- 9 g. a description of all other potential fees and charges that can
10 be avoided by the recipient, including, but not limited to, late
11 payment fees, returned payment fees, and fees owed brokers or
12 other third parties;
- 13 h. if the recipient were to elect to pay off or refinance the
14 commercial financing prior to full repayment:
- 15 (1) whether the recipient would be required to pay any finance
16 charges other than interest accrued since their last payment and, if
17 so, the percentage of any unpaid portion of the finance charge and
18 maximum dollar amount the recipient could be required to pay; and
19 (2) whether the recipient would be required to pay any
20 additional fees not already included in the finance charge; and
- 21 i. a description of collateral requirements or security interests,
22 if any.
- 23
- 24 4. A provider shall, at the time of extending a specific offer of
25 open-end financing in a form and manner prescribed by the
26 commissioner, disclose to the recipient:
- 27 a. the maximum amount of credit available to the recipient and
28 the amount scheduled to be drawn by the recipient at the time the
29 offer is extended, if any, less any fees deducted or withheld at
30 disbursement;
- 31 b. the finance charge;
- 32 c. the annual percentage rate, using only the words “annual
33 percentage rate” or the abbreviation "APR", expressed as a nominal
34 yearly rate, inclusive of any fees and finance charges that cannot be
35 avoided by a recipient, and calculated in accordance with section
36 1026.22 of Subpart C of Regulation Z (12 C.F.R. s.1026.22) of the
37 federal “Truth in Lending Act” (15 U.S.C. s.1601 et seq.), and
38 based on the maximum amount of credit available to the recipient
39 and the term resulting from making the minimum required
40 payments term as disclosed. In calculating the annual percentage
41 rate:
- 42 (1) the annual percentage rate shall be determined in accordance
43 with either the actuarial method or the United States Rule method.
44 Explanations, equations and instructions for determining the annual
45 percentage rate in accordance with the actuarial method are set forth
46 in appendix J to part 1026 of Subpart C of Regulation Z
47 (12 C.F.R. s.1026) of the federal “Truth in Lending
48 Act” (15 U.S.C. s.1601 et seq.). An error in disclosure of the annual

1 percentage rate or finance charge shall not, in itself, be considered a
2 violation of this act if:

3 (a) the error resulted from a corresponding error in a calculation
4 tool used in good faith by the creditor; and

5 (b) upon discovery of the error, the creditor promptly
6 discontinues use of that calculation tool for disclosure purposes and
7 notifies the Department of Banking and Insurance in writing of the
8 error in the calculation tool;

9 (2) the annual percentage rate shall be considered accurate if it
10 is not more than $1/8$ of 1 percentage point above or below the
11 annual percentage rate determined in accordance with paragraph (1)
12 of this subsection; and

13 (3) in an irregular transaction, the annual percentage rate shall
14 be considered accurate if it is not more than $1/4$ of 1 percentage
15 point above or below the annual percentage rate determined in
16 accordance with paragraph (1) of this subsection. For purposes of
17 this paragraph, an irregular transaction is one that includes one or
18 more of the following features: multiple advances, irregular
19 payment periods, or irregular payment amounts, other than an
20 irregular first period or an irregular first or final payment;

21 d. the total repayment amount, which is the draw amount, less
22 any fees deducted or withheld at disbursement, plus the finance
23 charge. The total repayment amount shall assume a draw amount
24 equal to the maximum amount of credit available to the recipient if
25 drawn and held for the duration of the term or draw period;

26 e. the term of the plan, if applicable, or the period over which a
27 draw is amortized;

28 f. the payment frequency and amounts, based on the
29 assumptions used in the calculation of the annual percentage rate,
30 including a description of payment amount requirements such as a
31 minimum payment amount, and if the payment frequency is other
32 than monthly, the amount of the average projected payments per
33 month. For payment amounts that are variable, the provider should
34 include a payment schedule, or a description of the method used to
35 calculate the amounts and frequency of payments, and the estimated
36 average monthly payment amount;

37 g. a description of all other potential fees and charges that can
38 be avoided by the recipient, including, but not limited to, draw fees,
39 late payment fees, returned payment fees, and fees owed brokers or
40 other third parties;

41 h. if the recipient were to elect to pay off or refinance the
42 commercial financing prior to full commercial financing prior to
43 full repayment:

44 (1) whether the recipient would be required to pay any finance
45 charges other than interest accrued since their last payment. If so,
46 disclosure of the percentage of any unpaid portion of the finance
47 charge and maximum dollar amount the recipient could be required
48 to pay; and

1 (2) whether the recipient would be required to pay any
2 additional fees not already included in the finance charge; and

3 i. a description of collateral requirements or security interests,
4 if any.

5
6 5. A provider shall, at the time of extending a specific offer for
7 a factoring transaction in a form and manner prescribed by the
8 commissioner, disclose to the recipient:

9 a. the amount of the receivables purchase price paid to the
10 recipient and, if different from the purchase price, the amount
11 disbursed to the recipient after any fees deducted or withheld at
12 disbursement;

13 b. the finance charge;

14 c. the estimated annual percentage rate, calculated pursuant to
15 Appendix J to part 1026 of Subpart C of Regulation Z
16 (12 C.F.R. s.1026) of the federal "Truth in Lending Act"
17 (15 U.S.C. s.1601 et seq.), as a single advance, single payment
18 transaction. To calculate the estimated annual percentage rate, the
19 purchase amount is considered the financing amount, the purchase
20 amount minus the finance charge is considered the payment
21 amount, and the term is established by the payment due date of the
22 receivables. Alternatively, the provider may estimate the term for a
23 factoring transaction as the average payment period, its historical
24 data over a period not to exceed the previous twelve months,
25 concerning payment invoices paid by the party owing the accounts
26 receivable in question. In calculating the annual percentage rate:

27 (1) the annual percentage rate shall be determined in accordance
28 with either the actuarial method or the United States Rule method.
29 Explanations, equations and instructions for determining the annual
30 percentage rate in accordance with the actuarial method are set forth
31 in appendix J to part 1026 of Subpart C of Regulation Z (12 C.F.R.
32 s.1026) of the federal "Truth in Lending Act" (15 U.S.C. s.1601 et
33 seq.). An error in disclosure of the annual percentage rate or finance
34 charge shall not, in itself, be considered a violation of this act if:

35 (a) the error resulted from a corresponding error in a calculation
36 tool used in good faith by the creditor; and

37 (b) upon discovery of the error, the creditor promptly
38 discontinues use of that calculation tool for disclosure purposes and
39 notifies the Department of Banking and Insurance in writing of the
40 error in the calculation tool;

41 (2) the annual percentage rate shall be considered accurate if it
42 is not more than 1/8 of 1 percentage point above or below the
43 annual percentage rate determined in accordance with paragraph (1)
44 of this subsection; and

45 (3) in an irregular transaction, the annual percentage rate shall
46 be considered accurate if it is not more than 1/4 of 1 percentage
47 point above or below the annual percentage rate determined in
48 accordance with paragraph (1) of this subsection. For purposes of

1 this paragraph, an irregular transaction is one that includes one or
2 more of the following features: multiple advances, irregular
3 payment periods, or irregular payment amounts, other than an
4 irregular first period or an irregular first or final payment;

5 d. the total payment amount, which is the purchase plus the
6 finance charge;

7 e. a description of all other potential fees and charges that can
8 be avoided by the recipient; and

9 f. a description of the receivables purchased and any additional
10 collateral requirements or security interests.

11

12 6. The commissioner may require, by regulation, certain
13 disclosures pursuant to this section of a provider extending a
14 specific offer of commercial financing that is not open-end
15 financing, closed-end financing, sales-based financing, or a
16 factoring transaction but otherwise meets the definition of
17 commercial financing pursuant to section 1 of this act.

18 If the commissioner requires disclosure pursuant to this section,
19 a provider shall, at the time of extending a specific offer of a form
20 of financing that is not open-end financing, closed-end financing,
21 sales-based financing, or a factoring transaction but otherwise
22 meets the definition of commercial financing pursuant to section 1
23 of this act and in a form and manner prescribed by the
24 commissioner, disclose to the recipient:

25 a. the total amount of the commercial financing, and the
26 disbursement amount, if different from the financing amount, after
27 any fees deducted or withheld at disbursement;

28 b. the finance charge;

29 c. the annual percentage rate, using only the words "annual
30 percentage rate" or the abbreviation "APR", expressed as a yearly
31 rate, inclusive of any fees and finance charges, and calculated in
32 accordance with section 1026.22 of Subpart C of Regulation Z
33 (12 C.F.R. s.1026.22) of the federal "Truth in Lending Act"
34 (15 U.S.C. s.1601 et seq.). In calculating the annual percentage
35 rate:

36 (1) the annual percentage rate shall be determined in accordance
37 with either the actuarial method or the United States Rule method.
38 Explanations, equations and instructions for determining the annual
39 percentage rate in accordance with the actuarial method are set forth
40 in appendix J to part 1026 of Subpart C of Regulation Z
41 (12 C.F.R. s.1026) of the federal "Truth in Lending Act"
42 (15 U.S.C. s.1601 et seq.). An error in disclosure of the annual
43 percentage rate or finance charge shall not, in itself, be considered a
44 violation of this act if:

45 (a) the error resulted from a corresponding error in a calculation
46 tool used in good faith by the creditor; and

47 (b) upon discovery of the error, the creditor promptly
48 discontinues use of that calculation tool for disclosure purposes and

1 notifies the Department of Banking and Insurance in writing of the
2 error in the calculation tool;

3 (2) the annual percentage rate shall be considered accurate if it
4 is not more than 1/8 of 1 percentage point above or below the
5 annual percentage rate determined in accordance with paragraph (1)
6 of this subsection; and

7 (3) in an irregular transaction, the annual percentage rate shall
8 be considered accurate if it is not more than 1/4 of 1 percentage
9 point above or below the annual percentage rate determined in
10 accordance with paragraph (1) of this subsection. For purposes of
11 this paragraph, an irregular transaction is one that includes one or
12 more of the following features: multiple advances, irregular
13 payment periods, or irregular payment amounts, other than an
14 irregular first period or an irregular first or final payment;

15 d. the total repayment amount which is the disbursement
16 amount plus the finance charge;

17 e. the term of the financing;

18 f. the payment amounts. The disclosure shall include, for
19 payment amounts that are:

20 (1) fixed, the payment amounts and frequency, and the average
21 monthly payment amount; or

22 (2) variable, a payment schedule or a description of the method
23 used to calculate the amounts and frequency of payments, and the
24 estimated average monthly payment amount;

25 g. a description of all other potential fees and charges that can
26 be avoided by the recipient, including, but not limited to, late
27 payment fees and returned payment fees;

28 h. if the recipient were to elect to pay off or refinance the
29 commercial financing prior to full repayment:

30 (1) whether the recipient would be required to pay any finance
31 charges other than interest accrued since their last payment. If so,
32 disclosure of the percentage of any unpaid portion of the finance
33 charge and maximum dollar amount the recipient could be required
34 to pay; and

35 (2) whether the recipient would be required to pay any
36 additional fees not already included in the finance charge; and

37 i. a description of collateral requirements or security interests,
38 if any.

39

40 7. Notwithstanding any other law to the contrary, and in
41 addition to other disclosures required pursuant to this act, a broker
42 who charges any fees, charges, or commissions that would be paid
43 by the recipient of the financing shall provide, at the time of
44 extending a specific offer for a commercial financing transaction in
45 a form and manner prescribed by the commissioner, a written
46 disclosure, in a document separate from the provider's contract with
47 the recipient, stating the following, if the information is not

- 1 contained within the disclosure offered by the provider directly to
2 the recipient:
- 3 a. a list of all fees or commissions that would be paid to the
4 broker by the recipient in connection with the commercial
5 financing;
 - 6 b. the total dollar amount of fees, charges, or commissions
7 listed pursuant to subsection a. of this section; and
 - 8 c. any increase to the annual percentage rate due to the charges
9 listed above and the resulting dollar cost.
- 10
- 11 8. If, as a condition of obtaining the commercial financing, the
12 provider requires the recipient to pay off the balance of an existing
13 commercial financing from the same provider, the provider shall
14 disclose:
- 15 a. the amount of the new commercial financing that is used to
16 pay off the portion of the existing commercial financing that
17 consists of prepayment charges required to be paid and any unpaid
18 interest expense that was not forgiven at the time of renewal. For
19 financing for which the total repayment amount is calculated as a
20 fixed amount, the prepayment charge is equal to the original finance
21 charge multiplied by the amount of the renewal used to pay off
22 existing financing as a percentage of the total repayment amount,
23 minus any portion of the total repayment amount forgiven by the
24 provider at the time of prepayment. If the amount is more than zero,
25 that amount shall be the answer to the following question: "Does
26 the renewal financing include any amount that is used to pay unpaid
27 finance charge or fees, also known as double dipping? Yes, {enter
28 amount}. If the amount is zero, the answer would be No."; and
 - 29 b. if the disbursement amount will be reduced to pay down any
30 unpaid portion of the outstanding balance, the actual dollar amount
31 by which such disbursement amount will be reduced.
- 32
- 33 9. A provider shall obtain the recipient's written or electronic
34 signature on all disclosures required to be presented to the recipient
35 pursuant to this act before authorizing the recipient to proceed
36 further with the commercial financing transaction application. A
37 provider is not required to obtain the recipient's signature on any
38 disclosure for a commercial financing transaction that is not
39 consummated. When a provider provides multiple disclosures to a
40 recipient during the negotiation of a commercial financing
41 transaction that is ultimately consummated, the provider need only
42 obtain the recipient's signature on the final disclosure that
43 corresponds to the consummated transaction.
- 44
- 45 10. For the purposes of determining whether a financing is a
46 commercial financing, a provider may rely on any statement of
47 intended purposes by the recipient. The statement may be a separate
48 statement signed by the recipient; may be contained in the financing

1 application, financing agreement, or other document signed or
2 consented to by the recipient; or may be provided orally by the
3 recipient so long as it is documented in the recipient's application
4 file by the provider. Electronic signatures and consents are valid for
5 purposes of the foregoing sentence. The provider shall not be
6 required to ascertain that the proceeds of commercial financing are
7 used in accordance with the recipient's statement of intended
8 purposes.

9
10 11. Nothing in this act shall prevent a provider from disclosing
11 additional information on a commercial financing being offered to a
12 recipient but it shall not be a requirement pursuant to this act. The
13 information required to be disclosed pursuant to subsections a.
14 through i. of section 6 of this act shall appear in the disclosure
15 document before any additional information is disclosed by a
16 provider, and shall be in larger font and visually separated from the
17 additional disclosure information. If other metrics of financing cost
18 are disclosed or used in the application process of a commercial
19 financing, the metrics shall not be presented as a "rate" if they are
20 not the annual interest rate or the annual percentage rate. The term
21 "interest," when used to describe a percentage rate, shall only be
22 used to describe an annualized percentage rate, including, but not
23 limited to, the annual interest rate. When a provider states a rate of
24 finance charge or a financing amount to a recipient during an
25 application process for commercial financing, the provider shall
26 also state the rate as an "annual percentage rate," using that term or
27 the abbreviation "APR."

28
29 12. The commissioner shall promulgate regulations pursuant to
30 the "Administrative Procedure Act," P.L.1968, c.410
31 (C.52:14B-1 et seq.):

32 a. concerning the calculation or determination of any metric
33 required to be disclosed to a recipient;

34 b. to develop and prescribe the form and manner in which a
35 provider shall make a disclosure pursuant to this act, which form
36 and manner shall allow recipients to easily compare financing
37 options, in a clear and conspicuous manner. The regulations shall
38 include the designation and method for disclosing the information
39 required in this act, or approving forms and methods already used
40 by providers; and

41 c. to define the terms used in this act and as may be necessary
42 and appropriate to interpret and implement the provisions of this
43 act.

44
45 13. a. A provider shall have no liability under this act for any
46 failure to comply with any requirement imposed by this act, if
47 within 60 days after discovering an error, and prior to the institution
48 of a civil action by a recipient or the receipt of written notice of the

1 error from the recipient, the provider notifies the recipient of the
2 error and makes whatever adjustments are necessary to assure that
3 the recipient will not be required to pay an amount in excess of the
4 charge actually disclosed, or the dollar equivalent of the annual
5 percentage rate actually disclosed, whichever is lower. A provider
6 shall reimburse the recipient in the event an amount was paid by the
7 recipient in excess of the charge actually owed.

8 b. A provider or financier shall have no liability for
9 inadvertently disclosing a finance charge, annual percentage rate,
10 periodic payment or irregular payment, average monthly cost,
11 maximum non-interest finance charge, or prepayment fee or charge
12 that exceeds the amount that the provider is required to disclose
13 under this act.

14
15 14. a. A provider or broker that violates any provision of this
16 act, as determined by the commissioner, shall be liable to a civil
17 penalty of not more than \$2,000 for each violation, or not more than
18 \$10,000 for each willful violation. The penalty shall be collected
19 by the commissioner in the name of the State in accordance with the
20 "Penalty Enforcement Law of 1999," P.L.1999, c.274
21 (C.2A:58-10 et seq.).

22 b. In addition to any penalty imposed pursuant to subsection a.
23 of this section, upon a finding by the commissioner that a provider
24 or broker has knowingly violated this act, the commissioner may
25 order additional relief, including, but not limited to, a permanent or
26 preliminary injunction on behalf of any recipient affected by the
27 violation.

28 c. A recipient or provider that is subject to any violation of this
29 act may bring an action against the provider or broker and recover a
30 civil penalty, as provided in subsection a. of this section, if the
31 court finds the provider or broker knowingly violated this act.

32
33 15. a. This act shall not apply to:

34 (1) a financial institution;

35 (2) a lender regulated under the federal "Farm Credit Act"
36 (12 U.S.C. s.2001 et seq.);

37 (3) a commercial financing transaction secured by real property;

38 (4) a lease as defined in N.J.S.12A:2A-103 or a purchase money
39 obligation as that term is defined in N.J.S.12A:9-103;

40 (5) a person or provider who makes not more than five
41 commercial financing transactions in this State in a 12 month
42 period;

43 (6) an individual commercial financing transaction in an amount
44 over \$500,000 dollars; or

45 (7) an inventory loan financing agreement or transaction entered
46 into pursuant to chapter 9 of Title 12A of the New Jersey Statutes.

47 b. When a provider extends access to a specific offer of
48 commercial financing or provides disclosures for commercial

1 financing or lending, it shall not be construed to mean that the
2 provider engaged in lending, making, funding, or providing
3 commercial financing.
4

5 16. This act shall take effect on the 180th day next following
6 enactment, except a provider shall not be required to comply with
7 the requirements of this act until 120 days after final regulations are
8 adopted by the commissioner pursuant to this act.
9

10
11 STATEMENT
12

13 This bill requires certain providers of commercial financing to
14 provide disclosures to recipients.

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

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

35 (1) the finance charge;

36 (2) the estimated annual percentage rate, using the words
37 "annual percentage rate" or the abbreviation "APR", expressed as a
38 yearly rate, inclusive of any fees and finance charges, and
39 calculated in accordance with section 1026.22 of Subpart C of
40 Regulation Z (12 C.F.R. s.1026.22) of the federal "Truth in Lending
41 Act" (15 U.S.C. s.1601 et seq.) and according to certain tolerances
42 and requirements;

43 (3) the total repayment amount;

44 (4) a description of all other potential fees and charges; and

45 (5) a description of collateral requirements or security interests,
46 if any.

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

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

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

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

18 (2) the total dollar amount of fees, charges, or commissions
19 listed pursuant to the bill; and

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

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

33 Nothing in this the bill prevents a provider from disclosing
34 additional information on a commercial financing being offered to a
35 recipient but additional information is not to be disclosed as part of
36 the disclosure required pursuant to the bill. The information
37 required to be disclosed pursuant to subsections a. through i. of
38 section 6 of the bill is to appear in the disclosure document before
39 any additional information is disclosed by a provider, and is to be in
40 larger font and visually separated from the additional disclosure
41 information. If other metrics of financing cost are disclosed or used
42 in the application process of a commercial financing, the metrics are
43 not to be presented as a "rate" if they are not the annual interest rate
44 or the annual percentage rate. The term "interest," when used to
45 describe a percentage rate, is only to be used to describe an
46 annualized percentage rate, including, but not limited to, the annual
47 interest rate. When a provider states a rate of finance charge or a
48 financing amount to a recipient during an application process for

1 commercial financing, the provider is to state the rate as an "annual
2 percentage rate," using that term or the abbreviation "APR."

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

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

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

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

38 The bill does not apply to:

- 39 (1) a financial institution;
- 40 (2) a lender regulated under the federal "Farm Credit Act"
41 (12 U.S.C. s.2001 et seq.);
- 42 (3) a commercial financing transaction secured by real property;
- 43 (4) a lease as defined in N.J.S.12A:2A-103 or a purchase money
44 obligation as that term is defined in N.J.S.12A:9-103;
- 45 (5) a person or provider who makes not more than five
46 commercial financing transactions in this State in a 12 month
47 period;

- 1 (6) an individual commercial financing transaction in an amount
- 2 over \$500,000 dollars; or
- 3 (7) an inventory loan financing agreement or transaction entered
- 4 into pursuant to chapter 9 of Title 12A of the New Jersey Statutes.