

[First Reprint]

SENATE, No. 1397

STATE OF NEW JERSEY

221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

SYNOPSIS

Requires certain disclosures by providers of commercial financing.

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on October 10, 2024, with amendments.



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.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted October 10, 2024.

1 “Finance charge” also includes any charges as determined by the
2 commissioner. As it relates to an open-end financing, the finance
3 charge shall assume the maximum amount of credit available to the
4 recipient, in each case, is drawn and held for the duration of the
5 term or draw period. For the purposes of a factoring transaction, the
6 finance charge includes the discount taken on the face value of the
7 accounts receivable.

8 “Financial institution” means any of the following:

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

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

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

21 “Open-end financing” means an agreement for one or more
22 extensions of open-end credit, secured or unsecured, the proceeds of
23 which the recipient does not intend to use primarily for personal,
24 family, or household purposes. “Open-end financing” includes
25 credit extended by a provider under a plan in which:

26 (1) the provider reasonably contemplates repeated transactions;

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

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

33 “Person” means an individual, sole proprietor or other
34 unincorporated organization, association, joint venture, partnership,
35 limited partnership association, limited liability company,
36 corporation, trust, or joint stock company.

37 “Provider” means a person who extends a specific offer of
38 commercial financing to a recipient. Except as otherwise provided
39 in this act, “provider” also includes a person, including a broker
40 who solicits and presents specific offers of commercial financing on
41 behalf of a third party.

42 “Recipient” means a person, or the authorized representative of a
43 person, who applies for commercial financing and is made a
44 specific offer of commercial financing by a provider. “Recipient”
45 shall not include a person acting as a broker.

46 “Sales-based financing” means a transaction that is repaid by the
47 recipient to the provider, over time and as a percentage of sales or
48 revenue, in which the payment amount may increase or decrease

1 according to the volume of sales made or revenue received by the
2 recipient. "Sales-based financing" includes a true-up mechanism
3 where the financing is repaid as a fixed payment but provides for a
4 reconciliation process that adjusts the payment to an amount that is
5 a percentage of sales or revenue.

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

14

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

18 a. the total amount of the commercial financing, and the
19 disbursement amount, if different from the financing amount, after any
20 fees deducted or withheld at disbursement;

21 b. the finance charge;

22 c. ¹(1)¹ the estimated annual percentage rate, using the words
23 annual percentage rate or the abbreviation "APR", expressed as a
24 yearly rate, inclusive of any fees and finance charges, and calculated in
25 accordance with section 1026.22 of Subpart C of Regulation Z
26 (12 C.F.R. s.1026.22) of the federal "Truth in Lending Act"
27 (15 U.S.C. s.1601 et seq.) based on the estimated term of repayment
28 and the projected periodic payment amounts. The provider shall
29 clearly disclose the estimated annual percentage rate as an estimate,
30 and may include additional statements informing the recipient that the
31 actual annual percentage rate may vary depending on actual time to
32 repay. The estimated term of repayment and the projected periodic
33 payment amounts shall be calculated based on the projected sales
34 volume, which is the projection of the recipient's sales. The projected
35 sales volume may be calculated using the historical method or the opt-
36 in method. The provider shall provide notice to the commissioner on
37 which method the provider will use across all instances of sales-based
38 financing offered in calculating estimated annual percentage rate
39 pursuant to this section. In calculating the projected sales volume:

40 ¹[(1)] (a)¹ a provider using the historical method shall use an
41 average historical volume of sales or revenue by which the financing's
42 payment amounts are based and by which the estimated annual
43 percentage rate is calculated. The provider shall fix the historical time
44 period used to calculate the average historical volume and use that
45 period for all disclosure purposes for all sales-based financing
46 products offered. The fixed historical time period shall be either the
47 preceding time period from the specific offer or the average sales for
48 the same number of months with the highest sales volume within the

- 1 past twelve months. The fixed historical time period shall be not less
2 than one month and not more than twelve months; and
- 3 ¹[(2)] (b)¹ a provider using the opt-in method shall determine the
4 estimated annual percentage rate, the estimated term, and the projected
5 payments, using a projected sales volume that the provider elects for
6 each disclosure. The provider using the opt-in method shall participate
7 in a review process to be determined by the commissioner. A provider
8 shall annually issue a report to the commissioner, in a form and
9 manner to be determined by the commissioner, of estimated annual
10 percentage rates disclosed to the recipient and actual retrospective
11 annual percentage rates of completed transactions. The report shall
12 contain information that the commissioner determines necessary or
13 appropriate to make a determination of whether the deviation between
14 the estimated annual percentage rate and actual retrospective annual
15 percentage rates of completed transactions was reasonable. The
16 commissioner may, upon a finding that the use of projected sales
17 volume by the provider has resulted in an unacceptable deviation
18 between estimated and actual annual percentage rate, require the
19 provider to use the historical method. The commissioner may consider
20 unusual and extraordinary circumstances impacting the provider's
21 deviation between estimated and actual annual percentage rate in the
22 determination of such a finding; ¹or
- 23 (2) the estimated yearly total dollar cost, consisting of the total
24 amount the recipient would pay each year, including, but not limited
25 to, the amount of the loan, accrued interest, and sales made or revenue
26 received;¹
- 27 d. the total repayment amount, which is the disbursement amount
28 plus the finance charge;
- 29 e. the estimated term, which is the period of time required for the
30 payments, based on the projected sales volume, to equal the total
31 amount required to be repaid;
- 32 f. the payment amounts, based on the projected sales volume.
33 The disclosure shall include, for payment amounts that are:
- 34 (1) fixed, the payment amounts and frequency and, if the payment
35 frequency is other than monthly, the amount of the average projected
36 payments per month; or
- 37 (2) variable, a payment schedule or a description of the method
38 used to calculate the amounts and frequency of payments, and the
39 amount of the average projected payments per month;
- 40 g. a description of all other potential fees and charges not
41 included in the finance charge, including, but not limited to, draw fees,
42 late payment fees, returned payment fees, and fees owed a broker or
43 other third party;
- 44 h. if the recipient were to elect to pay off or refinance the
45 commercial financing prior to full repayment:
- 46 (1) whether the recipient would be required to pay any finance
47 charges other than interest accrued since the recipient's last payment
48 and, if so, the percentage of any unpaid portion of the finance charge

1 and maximum dollar amount the recipient could be required to pay;
2 and

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

5 i. a description of collateral requirements or security interests, if
6 any.

7
8 3. A provider shall, at the time of extending a specific offer of
9 closed-end financing, that is not otherwise considered sales-based
10 financing, in a form and manner prescribed by the commissioner,
11 disclose to the recipient:

12 a. the total amount of the commercial financing, and the
13 disbursement amount, if different from the financing amount, after
14 any fees deducted or withheld at disbursement;

15 b. the finance charge;

16 c. The annual percentage rate, using only the words “annual
17 percentage rate” or the abbreviation "APR", expressed as a yearly
18 rate, inclusive of any fees and finance charges that cannot be
19 avoided by a recipient, and calculated in accordance with section
20 1026.22 of Subpart C of Regulation Z (12 C.F.R. s.1026.22) of the
21 federal “Truth in Lending Act” (15 U.S.C. s.1601 et seq.). In
22 calculating the annual percentage rate:

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

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

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

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

42 (3) in an irregular transaction, the annual percentage rate shall
43 be considered accurate if it is not more than 1/4 of 1 percentage
44 point above or below the annual percentage rate determined in
45 accordance with paragraph (1) of this subsection. For purposes of
46 this paragraph, an irregular transaction is one that includes one or
47 more of the following features: multiple advances, irregular

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

1 Explanations, equations and instructions for determining the annual
2 percentage rate in accordance with the actuarial method are set forth
3 in appendix J to part 1026 of Subpart C of Regulation Z
4 (12 C.F.R. s.1026) of the federal “Truth in Lending
5 Act” (15 U.S.C. s.1601 et seq.). An error in disclosure of the annual
6 percentage rate or finance charge shall not, in itself, be considered a
7 violation of this act if:

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

10 (b) upon discovery of the error, the creditor promptly
11 discontinues use of that calculation tool for disclosure purposes and
12 notifies the Department of Banking and Insurance in writing of the
13 error in the calculation tool;

14 (2) the annual percentage rate shall be considered accurate if it
15 is not more than $\frac{1}{8}$ of 1 percentage point above or below the
16 annual percentage rate determined in accordance with paragraph (1)
17 of this subsection; and

18 (3) in an irregular transaction, the annual percentage rate shall
19 be considered accurate if it is not more than $\frac{1}{4}$ of 1 percentage
20 point above or below the annual percentage rate determined in
21 accordance with paragraph (1) of this subsection. For purposes of
22 this paragraph, an irregular transaction is one that includes one or
23 more of the following features: multiple advances, irregular
24 payment periods, or irregular payment amounts, other than an
25 irregular first period or an irregular first or final payment;

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

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

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

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

46 h. if the recipient were to elect to pay off or refinance the
47 commercial financing prior to full commercial financing prior to
48 full repayment:

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

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

8 i. a description of collateral requirements or security interests,
9 if any.

10
11 5. A provider shall, at the time of extending a specific offer for a
12 factoring transaction in a form and manner prescribed by the
13 commissioner, disclose to the recipient:

14 a. the amount of the receivables purchase price paid to the
15 recipient and, if different from the purchase price, the amount
16 disbursed to the recipient after any fees deducted or withheld at
17 disbursement;

18 b. the finance charge;

19 c. ¹(1) the estimated annual percentage rate, calculated pursuant
20 to Appendix J to part 1026 of Subpart C of Regulation Z
21 (12 C.F.R. s.1026) of the federal “Truth in Lending Act”
22 (15 U.S.C. s.1601 et seq.), as a single advance, single payment
23 transaction. To calculate the estimated annual percentage rate, the
24 purchase amount is considered the financing amount, the purchase
25 amount minus the finance charge is considered the payment amount,
26 and the term is established by the payment due date of the receivables.
27 Alternatively, the provider may estimate the term for a factoring
28 transaction as the average payment period, its historical data over a
29 period not to exceed the previous twelve months, concerning payment
30 invoices paid by the party owing the accounts receivable in question.
31 In calculating the annual percentage rate:

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

41 ¹[(a)] (i) the error resulted from a corresponding error in a
42 calculation tool used in good faith by the creditor; and

43 ¹[(b)] (ii) upon discovery of the error, the creditor promptly
44 discontinues use of that calculation tool for disclosure purposes and
45 notifies the Department of Banking and Insurance in writing of the
46 error in the calculation tool;

- 1 ~~1~~ **[(2)] (b)**¹ the annual percentage rate shall be considered accurate
2 if it is not more than 1/8 of 1 percentage point above or below the
3 annual percentage rate determined in accordance with ~~1~~ **[paragraph**
4 ~~(1)] subparagraph (a)~~¹ of this ~~1~~ **[subsection] paragraph**¹; and
5 ~~1~~ **[(3)] (c)**¹ in an irregular transaction, the annual percentage rate
6 shall be considered accurate if it is not more than 1/4 of 1 percentage
7 point above or below the annual percentage rate determined in
8 accordance with ~~1~~ **[paragraph (1)] subparagraph (a)**¹ of this
9 ~~1~~ **[subsection] paragraph**¹. For purposes of this ~~1~~ **[paragraph]**
10 ~~subparagraph~~¹, an irregular transaction is one that includes one or
11 more of the following features: multiple advances, irregular payment
12 periods, or irregular payment amounts, other than an irregular first
13 period or an irregular first or final payment; ~~1~~ or
14 (2) the estimated yearly total dollar cost, consisting of the total
15 amount the recipient would pay each year, including, but not limited
16 to, the amount of the loan and accrued interest;¹
17 d. the total payment amount, which is the purchase plus the
18 finance charge;
19 e. a description of all other potential fees and charges that can be
20 avoided by the recipient; and
21 f. a description of the receivables purchased and any additional
22 collateral requirements or security interests.
23
24 6. The commissioner may require, by regulation, certain
25 disclosures pursuant to this section of a provider extending a
26 specific offer of commercial financing that is not open-end
27 financing, closed-end financing, sales-based financing, or a
28 factoring transaction but otherwise meets the definition of
29 commercial financing pursuant to section 1 of this act.
30 If the commissioner requires disclosure pursuant to this section,
31 a provider shall, at the time of extending a specific offer of a form
32 of financing that is not open-end financing, closed-end financing,
33 sales-based financing, or a factoring transaction but otherwise
34 meets the definition of commercial financing pursuant to section 1
35 of this act and in a form and manner prescribed by the
36 commissioner, disclose to the recipient:
37 a. the total amount of the commercial financing, and the
38 disbursement amount, if different from the financing amount, after
39 any fees deducted or withheld at disbursement;
40 b. the finance charge;
41 c. the annual percentage rate, using only the words “annual
42 percentage rate” or the abbreviation “APR”, expressed as a yearly
43 rate, inclusive of any fees and finance charges, and calculated in
44 accordance with section 1026.22 of Subpart C of Regulation Z
45 (12 C.F.R. s.1026.22) of the federal “Truth in Lending Act”
46 (15 U.S.C. s.1601 et seq.). In calculating the annual percentage
47 rate:

- 1 (1) the annual percentage rate shall be determined in accordance
2 with either the actuarial method or the United States Rule method.
3 Explanations, equations and instructions for determining the annual
4 percentage rate in accordance with the actuarial method are set forth
5 in appendix J to part 1026 of Subpart C of Regulation Z
6 (12 C.F.R. s.1026) of the federal "Truth in Lending Act"
7 (15 U.S.C. s.1601 et seq.). An error in disclosure of the annual
8 percentage rate or finance charge shall not, in itself, be considered a
9 violation of this act if:
- 10 (a) the error resulted from a corresponding error in a calculation
11 tool used in good faith by the creditor; and
- 12 (b) upon discovery of the error, the creditor promptly
13 discontinues use of that calculation tool for disclosure purposes and
14 notifies the Department of Banking and Insurance in writing of the
15 error in the calculation tool;
- 16 (2) the annual percentage rate shall be considered accurate if it
17 is not more than 1/8 of 1 percentage point above or below the
18 annual percentage rate determined in accordance with paragraph (1)
19 of this subsection; and
- 20 (3) in an irregular transaction, the annual percentage rate shall
21 be considered accurate if it is not more than 1/4 of 1 percentage
22 point above or below the annual percentage rate determined in
23 accordance with paragraph (1) of this subsection. For purposes of
24 this paragraph, an irregular transaction is one that includes one or
25 more of the following features: multiple advances, irregular
26 payment periods, or irregular payment amounts, other than an
27 irregular first period or an irregular first or final payment;
- 28 d. the total repayment amount which is the disbursement
29 amount plus the finance charge;
- 30 e. the term of the financing;
- 31 f. the payment amounts. The disclosure shall include, for
32 payment amounts that are:
- 33 (1) fixed, the payment amounts and frequency, and the average
34 monthly payment amount; or
- 35 (2) variable, a payment schedule or a description of the method
36 used to calculate the amounts and frequency of payments, and the
37 estimated average monthly payment amount;
- 38 g. a description of all other potential fees and charges that can
39 be avoided by the recipient, including, but not limited to, late
40 payment fees and returned payment fees;
- 41 h. if the recipient were to elect to pay off or refinance the
42 commercial financing prior to full repayment:
- 43 (1) whether the recipient would be required to pay any finance
44 charges other than interest accrued since their last payment. If so,
45 disclosure of the percentage of any unpaid portion of the finance
46 charge and maximum dollar amount the recipient could be required
47 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 7. Notwithstanding any other law to the contrary, and in
7 addition to other disclosures required pursuant to this act, a broker
8 who charges any fees, charges, or commissions that would be paid
9 by the recipient of the financing shall provide, at the time of
10 extending a specific offer for a commercial financing transaction in
11 a form and manner prescribed by the commissioner, a written
12 disclosure, in a document separate from the provider's contract with
13 the recipient, stating the following, if the information is not
14 contained within the disclosure offered by the provider directly to
15 the recipient:

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

19 b. the total dollar amount of fees, charges, or commissions
20 listed pursuant to subsection a. of this section; and

21 c. any increase to the annual percentage rate due to the charges
22 listed above and the resulting dollar cost.

23

24 8. If, as a condition of obtaining the commercial financing, the
25 provider requires the recipient to pay off the balance of an existing
26 commercial financing from the same provider, the provider shall
27 disclose:

28 a. the amount of the new commercial financing that is used to
29 pay off the portion of the existing commercial financing that
30 consists of prepayment charges required to be paid and any unpaid
31 interest expense that was not forgiven at the time of renewal. For
32 financing for which the total repayment amount is calculated as a
33 fixed amount, the prepayment charge is equal to the original finance
34 charge multiplied by the amount of the renewal used to pay off
35 existing financing as a percentage of the total repayment amount,
36 minus any portion of the total repayment amount forgiven by the
37 provider at the time of prepayment. If the amount is more than zero,
38 that amount shall be the answer to the following question: "Does
39 the renewal financing include any amount that is used to pay unpaid
40 finance charge or fees, also known as double dipping? Yes, {enter
41 amount}. If the amount is zero, the answer would be No."; and

42 b. if the disbursement amount will be reduced to pay down any
43 unpaid portion of the outstanding balance, the actual dollar amount
44 by which such disbursement amount will be reduced.

45

46 9. A provider shall obtain the recipient's written or electronic
47 signature on all disclosures required to be presented to the recipient
48 pursuant to this act before authorizing the recipient to proceed

1 further with the commercial financing transaction application. A
2 provider is not required to obtain the recipient's signature on any
3 disclosure for a commercial financing transaction that is not
4 consummated. When a provider provides multiple disclosures to a
5 recipient during the negotiation of a commercial financing
6 transaction that is ultimately consummated, the provider need only
7 obtain the recipient's signature on the final disclosure that
8 corresponds to the consummated transaction.

9
10 10. For the purposes of determining whether a financing is a
11 commercial financing, a provider may rely on any statement of
12 intended purposes by the recipient. The statement may be a separate
13 statement signed by the recipient; may be contained in the financing
14 application, financing agreement, or other document signed or
15 consented to by the recipient; or may be provided orally by the
16 recipient so long as it is documented in the recipient's application
17 file by the provider. Electronic signatures and consents are valid for
18 purposes of the foregoing sentence. The provider shall not be
19 required to ascertain that the proceeds of commercial financing are
20 used in accordance with the recipient's statement of intended
21 purposes.

22
23 11. Nothing in this act shall prevent a provider from disclosing
24 additional information on a commercial financing being offered to a
25 recipient but it shall not be a requirement pursuant to this act. The
26 information required to be disclosed pursuant to subsections a.
27 through i. of section 6 of this act shall appear in the disclosure
28 document before any additional information is disclosed by a
29 provider, and shall be in larger font and visually separated from the
30 additional disclosure information. If other metrics of financing cost
31 are disclosed or used in the application process of a commercial
32 financing, the metrics shall not be presented as a "rate" if they are
33 not the annual interest rate or the annual percentage rate. The term
34 "interest," when used to describe a percentage rate, shall only be
35 used to describe an annualized percentage rate, including, but not
36 limited to, the annual interest rate. When a provider states a rate of
37 finance charge or a financing amount to a recipient during an
38 application process for commercial financing, the provider shall
39 also state the rate as an "annual percentage rate," using that term or
40 the abbreviation "APR."

41
42 12. The commissioner shall promulgate regulations pursuant to the
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.):

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

46 b. to develop and prescribe the form and manner in which a
47 provider shall make a disclosure pursuant to this act, which form and
48 manner shall allow recipients to easily compare financing options, in a

1 clear and conspicuous manner. The regulations shall include the
2 designation and method for disclosing the information required in this
3 act, or approving forms and methods already used by providers;
4 ¹**[and]**¹

5 c. to define the terms used in this act and as may be necessary and
6 appropriate to interpret and implement the provisions of this act¹; and

7 d. that shall, to the extent possible, be consistent with and
8 substantially similar to regulations concerning commercial financing
9 disclosures adopted by other states that the commissioner determines
10 have disclosure requirements substantially similar to or more stringent
11 than the disclosure requirements imposed by this act. The regulations
12 adopted pursuant to this section shall also, to the extent possible, allow
13 the use of commercial lending disclosure forms approved for use in
14 such other states¹.

15

16 13. a. A provider shall have no liability under this act for any
17 failure to comply with any requirement imposed by this act, if
18 within 60 days after discovering an error, and prior to the institution
19 of a civil action by a recipient or the receipt of written notice of the
20 error from the recipient, the provider notifies the recipient of the
21 error and makes whatever adjustments are necessary to assure that
22 the recipient will not be required to pay an amount in excess of the
23 charge actually disclosed, or the dollar equivalent of the annual
24 percentage rate actually disclosed, whichever is lower. A provider
25 shall reimburse the recipient in the event an amount was paid by the
26 recipient in excess of the charge actually owed.

27 b. A provider or financier shall have no liability for
28 inadvertently disclosing a finance charge, annual percentage rate,
29 periodic payment or irregular payment, average monthly cost,
30 maximum non-interest finance charge, or prepayment fee or charge
31 that exceeds the amount that the provider is required to disclose
32 under this act.

33

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

40 b. In addition to any penalty imposed pursuant to subsection a. of
41 this section, upon a finding by the commissioner that a provider or
42 broker has ¹**[knowingly]** recklessly or willfully¹ violated this act, the
43 commissioner may order additional relief, including, but not limited to,
44 a permanent or preliminary injunction on behalf of any recipient
45 affected by the violation.

46 c. A recipient or provider that is subject to any violation of this
47 act may bring an action against the provider or broker and recover a
48 civil penalty, as provided in subsection a. of this section, if the court

1 finds the provider or broker ¹~~【knowingly】~~ recklessly or willfully¹
2 violated this act.

3

4 15. a. This act shall not apply to:

5 (1) a financial institution;

6 (2) a lender regulated under the federal “Farm Credit Act”
7 (12 U.S.C. s.2001 et seq.);

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

9 (4) ¹~~【a lease as defined in N.J.S.12A:2A-103 or a purchase money~~
10 ~~obligation as that term is defined in N.J.S.12A:9-103;~~

11 (5)¹ a person or provider who makes not more than five
12 commercial financing transactions in this State in a 12 month period;

13 ¹~~【(6) (5)~~¹ an individual commercial financing transaction in an
14 amount over \$500,000 dollars; or

15 ¹~~【(7) an inventory loan financing agreement or transaction entered~~
16 ~~into pursuant to chapter 9 of Title 12A of the New Jersey Statutes】~~ (6)
17 a commercial financing product that is a factoring transaction,
18 purchase, sale, advance, or similar of accounts receivables owed to a
19 health care provider because of a patient's personal injury treated by
20 the health care provider¹.

21 b. When a provider extends access to a specific offer of
22 commercial financing or provides disclosures for commercial
23 financing or lending, it shall not be construed to mean that the provider
24 engaged in lending, making, funding, or providing commercial
25 financing.

26

27 ¹16. a. A broker shall not charge any fee that is assessed or
28 collected prior to the closing of a commercial financing transaction by
29 a broker.

30 b. A broker shall not make or use:

31 (1) any false or misleading representations or omit any material
32 fact in the offer or sale of the services of a broker or engage, directly
33 or indirectly, in any act that operates or would operate as fraud or
34 deception upon any person in connection with the offer or sale of the
35 services of a broker, notwithstanding the absence of reliance by the
36 buyer; or

37 (2) any false or deceptive representation in its business dealings.¹

38

39 ¹~~【16.】~~ 17.¹ This act shall take effect on the 180th day next
40 following enactment, except a provider shall not be required to
41 comply with the requirements of this act until 120 days after final
42 regulations are adopted by the commissioner pursuant to this act.