

[Second 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 amended by the Senate on December 19, 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 ²an² open-end financing, closed-
28 end financing, sales-based financing, factoring transaction, ²finance
29 lease, as that term is defined in N.J.S.12A:2A-103,² or any other
30 form of financing, the proceeds of which the recipient does not
31 intend to ²[us] use² primarily for personal, family, or household
32 purposes.

33 “Commissioner” means the Commissioner of Banking and
34 Insurance.

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

41 “Finance charge” means the cost of financing as a dollar amount.
42 “Finance charge” includes any charge payable directly or indirectly
43 by the recipient and imposed directly or indirectly by the provider
44 as an incident to or a condition of the extension of financing. It

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.

²Senate floor amendments adopted December 19, 2024.

1 includes all charges that would be included under 12 C.F.R.
2 s.1026.4 as if the transaction were subject to 12 C.F.R. s.1026.4.
3 "Finance charge" also includes any charges as determined by the
4 commissioner. As it relates to an open-end financing, the finance
5 charge shall assume the maximum amount of credit available to the
6 recipient, in each case, is drawn and held for the duration of the
7 term or draw period. For the purposes of a factoring transaction, the
8 finance charge includes the discount taken on the face value of the
9 accounts receivable.

10 "Financial institution" means any of the following:

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

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

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

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

28 (1) the provider reasonably contemplates repeated transactions;

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

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

35 "Person" means an individual, sole proprietor or other
36 unincorporated organization, association, joint venture, partnership,
37 limited partnership association, limited liability company,
38 corporation, trust, or joint stock company.

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

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

1 "Sales-based financing" means a transaction that is repaid by the
2 recipient to the provider, over time and as a percentage of sales or
3 revenue, in which the payment amount may increase or decrease
4 according to the volume of sales made or revenue received by the
5 recipient. "Sales-based financing" includes a true-up mechanism
6 where the financing is repaid as a fixed payment but provides for a
7 reconciliation process that adjusts the payment to an amount that is
8 a percentage of sales or revenue.

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

17

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

21 a. the total amount of the commercial financing, and the
22 disbursement amount, if different from the financing amount, after
23 any fees deducted or withheld at disbursement;

24 b. the finance charge;

25 c. ²~~[(1)]~~² the estimated annual percentage rate, using the
26 words annual percentage rate or the abbreviation "APR", expressed
27 as a yearly rate, inclusive of any fees and finance charges, and
28 calculated in accordance with section 1026.22 of Subpart C of
29 Regulation Z (12 C.F.R. s.1026.22) of the federal "Truth in Lending
30 Act" (15 U.S.C. s.1601 et seq.) based on the estimated term of
31 repayment and the projected periodic payment amounts. The
32 provider shall clearly disclose the estimated annual percentage rate
33 as an estimate, and may include additional statements informing the
34 recipient that the actual annual percentage rate may vary depending
35 on actual time to repay. The estimated term of repayment and the
36 projected periodic payment amounts shall be calculated based on
37 the projected sales volume, which is the projection of the recipient's
38 sales. The projected sales volume may be calculated using the
39 historical method or the opt-in method. The provider shall provide
40 notice to the commissioner on which method the provider will use
41 across all instances of sales-based financing offered in calculating
42 estimated annual percentage rate pursuant to this section. In
43 calculating the projected sales volume:

44 ¹~~[(1)]~~ ²~~[(a)]~~¹ ~~(1)~~² a provider using the historical method shall
45 use an average historical volume of sales or revenue by which the
46 financing's payment amounts are based and by which the estimated
47 annual percentage rate is calculated. The provider shall fix the
48 historical time period used to calculate the average historical

1 volume and use that period for all disclosure purposes for all sales-
 2 based financing products offered. The fixed historical time period
 3 shall be either the preceding time period from the specific offer or
 4 the average sales for the same number of months with the highest
 5 sales volume within the past twelve months. The fixed historical
 6 time period shall be not less than one month and not more than
 7 twelve months; and

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

29 (2) the estimated yearly total dollar cost, consisting of the total
 30 amount the recipient would pay each year, including, but not
 31 limited to, the amount of the loan, accrued interest, and sales made
 32 or revenue received;'¹]²

33 d. the total repayment amount, which is the disbursement
 34 amount plus the finance charge;

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

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

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

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

46 g. a description of all other potential fees and charges not
 47 included in the finance charge, including, but not limited to, draw

- 1 fees, late payment fees, returned payment fees, and fees owed a
2 broker or other third party;
- 3 h. if the recipient were to elect to pay off or refinance the
4 commercial financing prior to full repayment:
- 5 (1) whether the recipient would be required to pay any finance
6 charges other than interest accrued since the recipient's last
7 payment and, if so, the percentage of any unpaid portion of the
8 finance charge and maximum dollar amount the recipient could be
9 required to pay; and
- 10 (2) whether the recipient would be required to pay any
11 additional fees not already included in the finance charge; and
- 12 i. a description of collateral requirements or security interests,
13 if any.
- 14
- 15 3. A provider shall, at the time of extending a specific offer of
16 closed-end financing, that is not otherwise considered sales-based
17 financing, in a form and manner prescribed by the commissioner,
18 disclose to the recipient:
- 19 a. the total amount of the commercial financing, and the
20 disbursement amount, if different from the financing amount, after
21 any fees deducted or withheld at disbursement;
- 22 b. the finance charge;
- 23 c. The annual percentage rate, using only the words "annual
24 percentage rate" or the abbreviation "APR", expressed as a yearly
25 rate, inclusive of any fees and finance charges that cannot be
26 avoided by a recipient, and calculated in accordance with section
27 1026.22 of Subpart C of Regulation Z (12 C.F.R. s.1026.22) of the
28 federal "Truth in Lending Act" (15 U.S.C. s.1601 et seq.). In
29 calculating the annual percentage rate:
- 30 (1) the annual percentage rate shall be determined in accordance
31 with either the actuarial method or the United States Rule method.
32 Explanations, equations and instructions for determining the annual
33 percentage rate in accordance with the actuarial method are set forth
34 in appendix J to part 1026 of Subpart C of Regulation Z
35 (12 C.F.R. s.1026) of the federal "Truth in Lending Act"
36 (15 U.S.C. s.1601 et seq.). An error in disclosure of the annual
37 percentage rate or finance charge shall not, in itself, be considered a
38 violation of this act if:
- 39 (a) the error resulted from a corresponding error in a calculation
40 tool used in good faith by the creditor; and
- 41 (b) upon discovery of the error, the creditor promptly
42 discontinues use of that calculation tool for disclosure purposes and
43 notifies the Department of Banking and Insurance in writing of the
44 error in the calculation tool;
- 45 (2) the annual percentage rate shall be considered accurate if it
46 is not more than 1/8 of 1 percentage point above or below the
47 annual percentage rate determined in accordance with paragraph (1)
48 of this subsection; and

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

1 based on the maximum amount of credit available to the recipient
2 and the term resulting from making the minimum required
3 payments term as disclosed. In calculating the annual percentage
4 rate:

5 (1) the annual percentage rate shall be determined in accordance
6 with either the actuarial method or the United States Rule method.
7 Explanations, equations and instructions for determining the annual
8 percentage rate in accordance with the actuarial method are set forth
9 in appendix J to part 1026 of Subpart C of Regulation Z
10 (12 C.F.R. s.1026) of the federal "Truth in Lending
11 Act" (15 U.S.C. s.1601 et seq.). An error in disclosure of the annual
12 percentage rate or finance charge shall not, in itself, be considered a
13 violation of this act if:

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

16 (b) upon discovery of the error, the creditor promptly
17 discontinues use of that calculation tool for disclosure purposes and
18 notifies the Department of Banking and Insurance in writing of the
19 error in the calculation tool;

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

24 (3) in an irregular transaction, the annual percentage rate shall
25 be considered accurate if it is not more than 1/4 of 1 percentage
26 point above or below the annual percentage rate determined in
27 accordance with paragraph (1) of this subsection. For purposes of
28 this paragraph, an irregular transaction is one that includes one or
29 more of the following features: multiple advances, irregular
30 payment periods, or irregular payment amounts, other than an
31 irregular first period or an irregular first or final payment;

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

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

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

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

5 h. if the recipient were to elect to pay off or refinance the
6 commercial financing prior to full commercial financing prior to
7 full repayment:

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

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

15 i. a description of collateral requirements or security interests,
16 if any.

17

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

21 a. the amount of the receivables purchase price paid to the
22 recipient and, if different from the purchase price, the amount
23 disbursed to the recipient after any fees deducted or withheld at
24 disbursement;

25 b. the finance charge;

26 c. ²[(1)]² the estimated annual percentage rate, calculated
27 pursuant to 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.), as a single advance, single payment
30 transaction. To calculate the estimated annual percentage rate, the
31 purchase amount is considered the financing amount, the purchase
32 amount minus the finance charge is considered the payment
33 amount, and the term is established by the payment due date of the
34 receivables. Alternatively, the provider may estimate the term for a
35 factoring transaction as the average payment period, its historical
36 data over a period not to exceed the previous twelve months,
37 concerning payment invoices paid by the party owing the accounts
38 receivable in question. In calculating the annual percentage rate:

39 ¹[(1)] ²[(a)]¹ (1)² the annual percentage rate shall be
40 determined in accordance with either the actuarial method or the
41 United States Rule method. Explanations, equations and
42 instructions for determining the annual percentage rate in
43 accordance with the actuarial method are set forth in appendix J to
44 part 1026 of Subpart C of Regulation Z
45 (12 C.F.R. s.1026) of the federal "Truth in Lending Act"
46 (15 U.S.C. s.1601 et seq.). An error in disclosure of the annual
47 percentage rate or finance charge shall not, in itself, be considered a
48 violation of this act if:

- 1 ¹[(a)] ²[(i)¹] (a)² the error resulted from a corresponding error
 2 in a calculation tool used in good faith by the creditor; and
- 3 ¹[(b)] ²[(ii)¹] (b)² upon discovery of the error, the creditor
 4 promptly discontinues use of that calculation tool for disclosure
 5 purposes and notifies the Department of Banking and Insurance in
 6 writing of the error in the calculation tool;
- 7 ¹[(2)] ²[(b)¹] (2)² the annual percentage rate shall be
 8 considered accurate if it is not more than 1/8 of 1 percentage point
 9 above or below the annual percentage rate determined in
 10 accordance with ¹[paragraph (1)] ²[subparagraph (a)¹] paragraph
 11 (1)² of this ¹[subsection] ²[paragraph¹] subsection²; and
- 12 ²[(3)] (c)¹ (3)² in an irregular transaction, the annual
 13 percentage rate shall be considered accurate if it is not more than
 14 1/4 of 1 percentage point above or below the annual percentage rate
 15 determined in accordance with ¹[paragraph (1)] ²[subparagraph
 16 (a)¹] paragraph (1)² of this ¹[subsection] ²[paragraph¹]
 17 subsection². For purposes of this ¹[paragraph] ²[subparagraph¹]
 18 paragraph², an irregular transaction is one that includes one or more
 19 of the following features: multiple advances, irregular payment
 20 periods, or irregular payment amounts, other than an irregular first
 21 period or an irregular first or final payment; ²[(1) or
 22 (2) the estimated yearly total dollar cost, consisting of the total
 23 amount the recipient would pay each year, including, but not
 24 limited to, the amount of the loan and accrued interest; ¹]²
- 25 d. the total payment amount, which is the purchase plus the
 26 finance charge;
- 27 e. a description of all other potential fees and charges that can
 28 be avoided by the recipient; and
- 29 f. a description of the receivables purchased and any additional
 30 collateral requirements or security interests.
- 31
- 32 6. The commissioner may require, by regulation, certain
 33 disclosures pursuant to this section of a provider extending a
 34 specific offer of commercial financing that is not open-end
 35 financing, closed-end financing, sales-based financing, or a
 36 factoring transaction but otherwise meets the definition of
 37 commercial financing pursuant to section 1 of this act.
- 38 If the commissioner requires disclosure pursuant to this section,
 39 a provider shall, at the time of extending a specific offer of a form
 40 of financing that is not open-end financing, closed-end financing,
 41 sales-based financing, or a factoring transaction but otherwise
 42 meets the definition of commercial financing pursuant to section 1
 43 of this act and in a form and manner prescribed by the
 44 commissioner, disclose to the recipient:
- 45 a. the total amount of the commercial financing, and the
 46 disbursement amount, if different from the financing amount, after
 47 any fees deducted or withheld at disbursement;

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

- 1 h. if the recipient were to elect to pay off or refinance the
- 2 commercial financing prior to full repayment:
- 3 (1) whether the recipient would be required to pay any finance
- 4 charges other than interest accrued since their last payment. If so,
- 5 disclosure of the percentage of any unpaid portion of the finance
- 6 charge and maximum dollar amount the recipient could be required
- 7 to pay; and
- 8 (2) whether the recipient would be required to pay any
- 9 additional fees not already included in the finance charge; and
- 10 i. a description of collateral requirements or security interests,
- 11 if any.
- 12
- 13 7. Notwithstanding any other law to the contrary, and in
- 14 addition to other disclosures required pursuant to this act, a broker
- 15 who charges any fees, charges, or commissions that would be paid
- 16 by the recipient of the financing shall provide, at the time of
- 17 extending a specific offer for a commercial financing transaction in
- 18 a form and manner prescribed by the commissioner, a written
- 19 disclosure, in a document separate from the provider's contract with
- 20 the recipient, stating the following, if the information is not
- 21 contained within the disclosure offered by the provider directly to
- 22 the recipient:
- 23 a. a list of all fees or commissions that would be paid to the
- 24 broker by the recipient in connection with the commercial
- 25 financing;
- 26 b. the total dollar amount of fees, charges, or commissions
- 27 listed pursuant to subsection a. of this section; and
- 28 c. any increase to the annual percentage rate due to the charges
- 29 listed above and the resulting dollar cost.
- 30
- 31 8. If, as a condition of obtaining the commercial financing, the
- 32 provider requires the recipient to pay off the balance of an existing
- 33 commercial financing from the same provider, the provider shall
- 34 disclose:
- 35 a. the amount of the new commercial financing that is used to
- 36 pay off the portion of the existing commercial financing that
- 37 consists of prepayment charges required to be paid and any unpaid
- 38 interest expense that was not forgiven at the time of renewal. For
- 39 financing for which the total repayment amount is calculated as a
- 40 fixed amount, the prepayment charge is equal to the original finance
- 41 charge multiplied by the amount of the renewal used to pay off
- 42 existing financing as a percentage of the total repayment amount,
- 43 minus any portion of the total repayment amount forgiven by the
- 44 provider at the time of prepayment. If the amount is more than zero,
- 45 that amount shall be the answer to the following question: "Does
- 46 the renewal financing include any amount that is used to pay unpaid
- 47 finance charge or fees, also known as double dipping? Yes, {enter
- 48 amount}. If the amount is zero, the answer would be No."; and

1 b. if the disbursement amount will be reduced to pay down any
2 unpaid portion of the outstanding balance, the actual dollar amount
3 by which such disbursement amount will be reduced.
4

5 9. A provider shall obtain the recipient's written or electronic
6 signature on all disclosures required to be presented to the recipient
7 pursuant to this act before authorizing the recipient to proceed
8 further with the commercial financing transaction application. A
9 provider is not required to obtain the recipient's signature on any
10 disclosure for a commercial financing transaction that is not
11 consummated. When a provider provides multiple disclosures to a
12 recipient during the negotiation of a commercial financing
13 transaction that is ultimately consummated, the provider need only
14 obtain the recipient's signature on the final disclosure that
15 corresponds to the consummated transaction.
16

17 10. For the purposes of determining whether a financing is a
18 commercial financing, a provider may rely on any statement of
19 intended purposes by the recipient. The statement may be a separate
20 statement signed by the recipient; may be contained in the financing
21 application, financing agreement, or other document signed or
22 consented to by the recipient; or may be provided orally by the
23 recipient so long as it is documented in the recipient's application
24 file by the provider. Electronic signatures and consents are valid for
25 purposes of the foregoing sentence. The provider shall not be
26 required to ascertain that the proceeds of commercial financing are
27 used in accordance with the recipient's statement of intended
28 purposes.
29

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

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

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

5 b. to develop and prescribe the form and manner in which a
6 provider shall make a disclosure pursuant to this act, which form and
7 manner shall allow recipients to easily compare financing options, in a
8 clear and conspicuous manner. The regulations shall include the
9 designation and method for disclosing the information required in this
10 act, or approving forms and methods already used by providers;

11 **'[and]'**

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

14 d. that shall, to the extent possible, be consistent with and
15 substantially similar to regulations concerning commercial financing
16 disclosures adopted by other states that the commissioner determines
17 have disclosure requirements substantially similar to or more stringent
18 than the disclosure requirements imposed by this act. The regulations
19 adopted pursuant to this section shall also, to the extent possible, allow
20 the use of commercial lending disclosure forms approved for use in
21 such other states¹.

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

34 b. A provider or financier shall have no liability for
35 inadvertently disclosing a finance charge, annual percentage rate,
36 periodic payment or irregular payment, average monthly cost,
37 maximum non-interest finance charge, or prepayment fee or charge
38 that exceeds the amount that the provider is required to disclose
39 under this act.

40
41 14. a. A provider or broker that violates any provision of this act,
42 as determined by the commissioner, shall be liable to a civil penalty of
43 not more than \$2,000 for each violation, or not more than \$10,000 for
44 each willful violation. The penalty shall be collected by the
45 commissioner in the name of the State in accordance with the "Penalty
46 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

47 b. In addition to any penalty imposed pursuant to subsection a. of
48 this section, upon a finding by the commissioner that a provider or

1 broker has ¹~~【knowingly】~~ recklessly or willfully¹ violated this act, the
2 commissioner may order additional relief, including, but not limited to,
3 a permanent or preliminary injunction on behalf of any recipient
4 affected by the violation.

5 c. A recipient or provider that is subject to any violation of this
6 act may bring an action against the provider or broker and recover a
7 civil penalty, as provided in subsection a. of this section, if the court
8 finds the provider or broker ¹~~【knowingly】~~ recklessly or willfully¹
9 violated this act.

10

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

12 (1) a financial institution;

13 (2) a lender regulated under the federal “Farm Credit Act”
14 (12 U.S.C. s.2001 et seq.);

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

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

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

21 ¹~~【(6)】~~ (5)¹ an individual commercial financing transaction in an
22 amount over \$500,000 dollars; ²~~【or】~~²

23 ¹~~【(7) an inventory loan financing agreement or transaction~~
24 ~~entered into pursuant to chapter 9 of Title 12A of the New Jersey~~
25 ~~Statutes】~~ (6) a commercial financing product that is a factoring
26 transaction, purchase, sale, advance, or similar of accounts
27 receivables owed to a health care provider because of a patient's
28 personal injury treated by the health care provider^{1 2}; or

29 (7) a lease as defined in N.J.S.12A:2A-103².

30 b. When a provider extends access to a specific offer of
31 commercial financing or provides disclosures for commercial
32 financing or lending, it shall not be construed to mean that the
33 provider engaged in lending, making, funding, or providing
34 commercial financing.

35

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

39 b. A broker shall not make or use:

40 (1) any false or misleading representations or omit any material
41 fact in the offer or sale of the services of a broker or engage, directly
42 or indirectly, in any act that operates or would operate as fraud or
43 deception upon any person in connection with the offer or sale of the
44 services of a broker, notwithstanding the absence of reliance by the
45 buyer; or

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

47

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16

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