SENATE, No. 1760

STATE OF NEW JERSEY

222nd LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2026 SESSION

Sponsored by:
Senator TROY SINGLETON
District 7 (Burlington)

SYNOPSIS

Requires certain disclosures by providers of commercial financing.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning commercial financing and supplementing P.L.1964, c.162 (C.17:9A-59.25 et seq.).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. As used in this act:

"Broker" means a person who, for or in expectation of consideration:

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

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

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

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

"Commercial financing" means an open-end financing, closed-end financing, sales-based financing, factoring transaction, finance lease, as that term is defined in N.J.S.12A:2A-103, or any other form of financing, the proceeds of which the recipient does not intend to use primarily for personal, family, or household purposes.

"Commissioner" means the Commissioner of Banking and Insurance.

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

"Finance charge" means the cost of financing as a dollar amount. "Finance charge" includes any charge payable directly or indirectly by the recipient and imposed directly or indirectly by the provider as an incident to or a condition of the extension of financing. It includes all charges that would be included under 12 C.F.R. s.1026.4 as if the transaction were subject to 12 C.F.R. s.1026.4. "Finance charge" also includes any charges as determined by the commissioner. As it relates to an open-end financing, the finance charge shall assume the maximum amount of credit available to the

recipient, in each case, is drawn and held for the duration of the term or draw period. For the purposes of a factoring transaction, the finance charge includes the discount taken on the face value of the accounts receivable.

"Financial institution" means any of the following:

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

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

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

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

(1) the provider reasonably contemplates repeated transactions;

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

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

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

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

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

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

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

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

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

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

b. the finance charge;

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

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

shall be not less than one month and not more than twelve months; and

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

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

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

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

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

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

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

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

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

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

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

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

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

b. the finance charge;

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

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

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

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

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

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

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

e. the term of the financing;

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

(1) fixed, the payment amounts and frequency, and, if the term is longer than one month, the average monthly payment amount; or

(2) variable, a full payment schedule or a description of the method used to calculate the amounts and frequency of payments, and, if the term is longer than one month, the estimated average monthly payment amount;

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

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

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

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

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

4. A provider shall, at the time of extending a specific offer of open-end financing in a form and manner prescribed by the commissioner, disclose to the recipient:

a. the maximum amount of credit available to the recipient and the amount scheduled to be drawn by the recipient at the time the offer is extended, if any, less any fees deducted or withheld at disbursement;

b. the finance charge;

c. the annual percentage rate, using only the words “annual percentage rate” or the abbreviation "APR", expressed as a nominal yearly rate, inclusive of any fees and finance charges that cannot be avoided by a recipient, and calculated in accordance with section 1026.22 of Subpart C of Regulation Z (12 C.F.R. s.1026.22) of the federal “Truth in Lending Act” (15 U.S.C. s.1601 et seq.), and based on the maximum amount of credit available to the recipient and the term resulting from making the minimum required payments term as disclosed. In calculating the annual percentage rate:

(1) the annual percentage rate shall be determined in accordance with either the actuarial method or the United States Rule method. Explanations, equations and instructions for determining the annual percentage rate in accordance with the actuarial method are set forth

in appendix J to part 1026 of Subpart C of Regulation Z (12 C.F.R. s.1026) of the federal "Truth in Lending Act" (15 U.S.C. s.1601 et seq.). An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this act if:

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

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

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

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

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

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

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

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

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

(1) whether the recipient would be required to pay any finance charges other than interest accrued since their last payment. If so,

disclosure of the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient could be required to pay; and

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

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

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

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

b. the finance charge;

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

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

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

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

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

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

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

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

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

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

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

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

b. the finance charge;

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

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

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

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

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

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

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

e. the term of the financing;

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

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

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

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

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

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

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

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

7. Notwithstanding any other law to the contrary, and in addition to other disclosures required pursuant to this act, a broker who charges any fees, charges, or commissions that would be paid by the recipient of the financing shall provide, at the time of extending a specific offer for a commercial financing transaction in

a form and manner prescribed by the commissioner, a written disclosure, in a document separate from the provider's contract with the recipient, stating the following, if the information is not contained within the disclosure offered by the provider directly to the recipient:

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

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

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

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

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

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

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

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

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

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

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

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

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

d. that shall, to the extent possible, be consistent with and substantially similar to regulations concerning commercial financing disclosures adopted by other states that the commissioner determines have disclosure requirements substantially similar to or more stringent

than the disclosure requirements imposed by this act. The regulations adopted pursuant to this section shall also, to the extent possible, allow the use of commercial lending disclosure forms approved for use in such other states.

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

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

c. A recipient shall not allege as a defense in any action, and a provider shall have no liability and shall not be required to make any adjustment or reimbursement under subsection a. of this section for changes in the estimated annual percentage rate or corresponding payment amounts after consummation of a transaction where:

(1) the transaction is “sales-based financing,” as defined in this act;

(2) at the time the provider extended the specific offer, the provider disclosed an estimated annual percentage rate as prescribed in section 2 of this act, including projected periodic payments and projected term based on previous and projected sales or revenue; and

(3) the changes in the annual percentage rate or payment amounts result solely from actual fluctuations in the recipient's sales or revenue as compared to the projected sales volume used by the provider in the calculation of the estimated annual percentage rate.

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

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

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

15. a. This act shall not apply to:

(1) a financial institution;

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

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

(4) a person or provider who makes not more than five commercial financing transactions in this State in a 12 month period; (5) an individual commercial financing transaction in an amount over $500,000 dollars;

(6) a commercial financing product that is a factoring transaction, purchase, sale, advance, or similar of accounts receivables owed to a health care provider because of a patient's personal injury treated by the health care provider; or

(7) a lease as defined in N.J.S.12A:2A-103.

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

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

b. A broker shall not make or use:

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

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

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

STATEMENT

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

Under the bill, "provider" is defined to mean a person who extends a specific offer of commercial financing to a recipient and includes a person, including a broker, who solicits and presents specific offers of commercial financing on behalf of a third party. "Commercial financing" is defined to mean open-end financing, closed-end financing, sales-based financing, factoring transaction, or any other form of financing, the proceeds of which the recipient does not intend to us primarily for personal, family, or household purposes.

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

(1) the finance charge;

(2) the estimated annual percentage rate, using the words "annual percentage rate" or the abbreviation "APR," expressed as a yearly rate, inclusive of any fees and finance charges, and calculated in accordance with section 1026.22 of Subpart C of Regulation Z (12 C.F.R. s.1026.22) of the federal "Truth in Lending Act" (15 U.S.C. s.1601 et seq.) and according to certain tolerances and requirements; or, for factoring transactions and sales-based financing transactions, the estimated yearly total dollar cost;

(3) the total payment amount;

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

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

The bill also provides that the commissioner may require by regulation a provider extending a specific offer of commercial financing that is not open-end financing, closed-end financing, sales-based financing, or a factoring transaction but otherwise meets the definition of commercial financing pursuant the bill to make certain disclosures to the recipient that are delineated in the bill.

Under the bill, in addition to other disclosures required pursuant to the bill, a broker who charges any fees, charges, or commissions that would be paid by the recipient of the financing is to provide, at the time of extending a specific offer for a commercial financing transaction and in a form and manner prescribed by the commissioner, a written disclosure of certain information, in a document separate from the provider's contract with the recipient.

The bill stipulates that regulations issued by the Department of Banking and Insurance pursuant to the bill are required to be, to the extent possible, consistent with and substantially similar to regulations concerning commercial financing disclosures adopted in other states.

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

This bill removes provisions giving providers of factoring transactions and sales-based financing transactions the option of disclosing to the recipient the estimated yearly total dollar cost of the transaction instead of the estimated annual percentage rate. The bill also exempts from the bill leases as defined in N.J.S.12A:2A-103 and includes finance leases within the definition of "commercial financing," thereby making finance leases subject to the provisions of the bill.

Lastly, this bill protects a provider from liability and prevents a recipient of commercial financing from alleging as a defense in any action, changes in the estimated annual percentage rate (APR) or payment amount after a sales-based financing transaction has been consummated. A provider of a sales-based financing transaction will not be held liable if : (1) the provider of a sales-based financing transaction provides an estimated APR to a recipient as prescribed in the bill; and (2) the changes in the APR or payment amount result solely from actual fluctuations in the recipient's sales or revenue.