

## Committee on Banking and Insurance

### **CS/HB 1353 — Commercial Financing Product Brokers and Providers**

by Commerce Committee and Rep. Bankson and others (CS/CS/SB 1624 Appropriations Committee on Criminal and Civil Justice; Banking and Insurance Committee; and Senator Brodeur)

The bill creates the “Florida Commercial Financing Disclosure Law,” which requires a provider that consummates more than five commercial financing transactions of \$500,000 or less in a 12-month period to give each business that enters into a consumer financing transaction certain written disclosures regarding the total cost of the transaction, and the manner, frequency, and amount of each payment. The bill provides exemptions to these disclosures. The bill provides that a provider’s characterization of accounts receivable purchase transaction as a purchase is conclusive that the transaction is not a loan or a transaction for the use, forbearance, or detention of money. The commercial financing disclosures can be used to assist small businesses in comparing the types and cost of financial products available in the marketplace.

#### ***Disclosures***

The provider is required to disclose in writing the following at or before consummation of a commercial financing transaction:

- The total amount of funds provided to the business under the terms of the agreement;
- The total amount of funds disbursed to the business under the terms of the agreement, if less than the total amount of funds provided, as a result of any fees deducted or withheld at disbursement and any amount paid to a third party on behalf of the business;
- The total amount to be paid to the provider pursuant to terms of the agreement;
- The total dollar cost of the commercial financing transaction under the terms of the agreement, derived by subtracting the total amount of funds provided from the total of payments;
- The manner, frequency, and amount of each payment; and
- A statement of whether there are any costs or discounts associated with prepayment of the commercial financing transaction including a reference to the provision in the agreement that creates the contractual rights of the parties related to prepayment.

A provider that consummates a commercial financing facility to purchase multiple accounts receivable from a recipient may provide the required disclosures described above that are based on an example of an accounts receivable purchase with a total face amount of \$10,000. Only one disclosure is required for each commercial financing facility, and a disclosure is not required as a result of a modification, forbearance, or change to the facility.

#### ***Prohibited Acts***

The bill prohibits a broker arranging a consumer financing transaction from engaging in any of the following acts:

- Assessing, collecting, or soliciting an advance fee from a business to provide services to a broker. However, this prohibition would not preclude a broker from soliciting a business to pay for, or preclude a business from paying for, actual services necessary to apply for commercial financial products, such as a credit check or an appraisal of security, if certain conditions are met.
- Making or using any false or misleading representation or omitting any material fact in the offer or sale of the services of a broker or engage in any act that would operate as fraud or deception upon any person in connection with the offer or sale of the services of the broker, notwithstanding the absence of reliance by the business.
- Making or using any false or deceptive representation in its business dealings.
- Offering the services of a broker by any advertisement without disclosing the actual address and telephone number of the business of the broker.

### ***Enforcement***

The bill provides that a violation of this act is punishable by a fine of \$500 per incident, not to exceed \$20,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation of this act. Any person who violates any provision of this act after receiving written notice of a prior violation from the Attorney General is subject to a fine of \$1,000 per incident, not to exceed \$50,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation of this act. The Attorney General has exclusive authority to impose fines for noncompliance with the disclosure requirements and prohibited acts.

The bill does not create a private right of action against any person or entity based upon compliance or noncompliance with this act. A violation of the provisions of this bill do not affect the enforceability or validity of the underlying commercial financing transaction.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect July 1, 2023.

*Vote: Senate 39-0; House 113-1*