

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Bankson offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Part XIII of chapter 559, Florida Statutes, consisting of sections 559.961, 559.9611, 559.9612, 559.9613, 559.9614, and 559.9615, Florida Statutes, is created to read:

PART XIII

FLORIDA COMMERCIAL FINANCING DISCLOSURE LAW

559.961 Short title.—This part may be cited as the

"Florida Commercial Financing Disclosure Law."

559.9611 Definitions.—As used in this part, the term:

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13 (1) "Accounts receivable purchase transaction" means a
14 transaction in which a business forwards or otherwise sells to a
15 person all or a portion of the business's accounts or payment
16 intangibles as those terms are defined in s. 679.1021(1) at a
17 discount to the expected value of the account or payment
18 intangibles. For purposes of this part, the provider's
19 characterization of an accounts receivable purchase transaction
20 as a purchase is conclusive that the accounts receivable
21 purchase transaction is not a loan or a transaction for the use,
22 forbearance, or detention of money.

23 (2) "Advance fee" means any consideration that is assessed
24 or collected by a broker before the closing of a commercial
25 financing transaction.

26 (3) "Broker" means a person who, for compensation or the
27 expectation of compensation, arranges a commercial financing
28 transaction or an offer between a third party and a business in
29 this state which would, if executed, be binding upon that third
30 party. The term excludes a provider and any individual or entity
31 whose compensation is not based or dependent upon the terms of
32 the specific commercial financing transaction obtained or
33 offered.

34 (4) "Business" means an individual or a group of
35 individuals, a sole proprietorship, a corporation, a limited
36 liability company, a trust, an estate, a cooperative, an

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37 association, or a limited or general partnership engaged in a
38 business activity.

39 (5) "Commercial financing facility" means a provider's
40 plan for purchasing multiple accounts receivable from the
41 recipient over a period of time pursuant to an agreement that
42 sets forth the terms and conditions governing the use of the
43 facility.

44 (6) "Commercial financing transaction" means a commercial
45 loan, an accounts receivable purchase transaction, or a
46 commercial open-end credit plan to the extent the transaction is
47 also a business purpose transaction. As used in this subsection,
48 the term "business purpose transaction" means a transaction the
49 proceeds of which are provided to a business or are intended to
50 be used to carry on a business and not to be used for personal,
51 family, or household purposes. For purposes of determining
52 whether a transaction is a business purpose transaction, the
53 provider may rely on any written statement of intended purpose
54 signed by the business. The statement may be a separate
55 statement or may be contained in an application, agreement, or
56 other document signed by the business or the business owner.

57 (7) "Commercial loan" means a loan to a business, whether
58 secured or unsecured.

59 (8) "Commercial open-end credit plan" means commercial
60 financing extended by any provider under a plan in which:

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61 (a) The provider reasonably contemplates repeat
62 transactions.

63 (b) The amount of financing that may be extended to the
64 business during the term of the plan, up to any limit set by the
65 provider, is generally made available to the extent that any
66 outstanding balance is repaid.

67 (9) "Depository institution" means a Florida state-
68 chartered bank, savings bank, credit union, or trust company, or
69 a federal savings or thrift association, bank, credit union,
70 savings bank, or thrift.

71 (10) "Provider" means a person who consummates more than
72 five commercial financing transactions with a business located
73 in this state in any calendar year. The term also includes a
74 person who enters into a written agreement with a depository
75 institution to arrange a commercial financing transaction
76 between the depository institution and a business via an online
77 lending platform administered by the person. The fact that a
78 provider extends a specific offer for a commercial financing
79 transaction on behalf of a depository institution may not be
80 construed to mean that the provider engaged in lending or
81 financing or originated that loan or financing.

82 559.9612 Scope of this part.—This part applies to any
83 commercial financing transaction consummated on or after January
84 1, 2024. This part does not apply to:

85 (1) A provider that is:

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86 (a) A federally insured depository institution or an
87 affiliate or holding company of such institution; or

88 (b) A subsidiary or service corporation that is owned and
89 controlled by a federally insured depository institution or
90 under common ownership with such institution.

91 (2) A provider that is a lender regulated under the Farm
92 Credit Act of 1971, 12 U.S.C. ss. 2001 et seq.

93 (3) A commercial financing transaction that is:

94 (a) Secured by real property;

95 (b) A lease; or

96 (c) A purchase money obligation that is incurred as all or
97 part of the price of the collateral or for value given to enable
98 the business to acquire rights in or the use of the collateral
99 if the value is in fact so used.

100 (4) A commercial financing transaction in which the
101 recipient is a motor vehicle dealer or an affiliate of such a
102 dealer, or a vehicle rental company or an affiliate of such a
103 company, pursuant to a commercial loan or commercial open-end
104 credit plan of at least \$50,000 or a commercial financing
105 transaction offered by a person in connection with the sale or
106 lease of products or services that such person manufactures,
107 licenses, or distributes, or whose parent company or any of its
108 directly or indirectly owned and controlled subsidiaries
109 manufactures, licenses, or distributes.

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110 (5) A provider that is licensed as a money transmitter
111 under chapter 560 or licensed as a money transmitter by any
112 other state, district, territory, or commonwealth of the United
113 States.

114 (6) A provider that consummates no more than five
115 commercial financing transactions in this state in a 12-month
116 period.

117 (7) A commercial financing transaction of more than
118 \$500,000.

119 559.9613 Disclosures.-

120 (1) A provider that consummates a commercial financing
121 transaction shall provide a written disclosure of the terms of
122 the commercial financing transaction as required by subsection
123 (2). The disclosure must be provided at or before consummation
124 of the transaction. Only one disclosure must be provided for
125 each commercial financing transaction, and a disclosure is not
126 required as result of a modification, forbearance, or change to
127 a consummated commercial financing transaction.

128 (2) A provider shall provide a written disclosure of the
129 following information in connection with each commercial
130 financing transaction:

131 (a) The total amount of funds provided to the business
132 under the terms of the agreement.

133 (b) The total amount of funds disbursed to the business if
134 less than the amount specified in paragraph (a) as a result of

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135 any fees deducted or withheld at disbursement, any amount paid
136 to the provider to satisfy a prior balance, and any amount paid
137 to a third party on behalf of the business.

138 (c) The total amount to be paid to the provider under the
139 terms of the agreement.

140 (d) The total dollar cost under the terms of the
141 agreement, calculated by finding the difference between the
142 amount specified in paragraph (a) and the amount specified in
143 paragraph (c).

144 (e)1. The manner, frequency, and amount of each payment;
145 or

146 2. If the amount of the payments may vary, the manner and
147 frequency of the payments, the estimated amount of the initial
148 payment, a description of the methodology for calculating any
149 variable payment, and the circumstances under which payments may
150 vary.

151 (f) Whether there are any costs or discounts associated
152 with prepayment, including a reference to the provision in the
153 agreement which creates the contractual rights of the parties
154 related to prepayment.

155 (3) A provider that consummates a commercial financing
156 facility may provide disclosures required by subsection (2)
157 which are based on an example of a transaction that could occur
158 under the agreement. The example must be based on an account
159 receivable total face amount owed of \$10,000. Only one

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160 disclosure is required for each commercial financing facility,
161 and a disclosure is not required as result of a modification,
162 forbearance, or change to the facility. A new disclosure is not
163 required each time accounts receivable are purchased under the
164 facility.

165 559.9614 Prohibited acts.-A broker may not do any of the
166 following:

167 (1) Assess, collect, or solicit an advance fee from a
168 business to provide services as a broker. However, this
169 subsection does not preclude a broker from soliciting a business
170 to pay for, or preclude a business from paying for, actual
171 services necessary to apply for a commercial financing
172 transaction, including, but not limited to, a credit check or an
173 appraisal of security, if such payment is made by check or money
174 order payable to a party independent of the broker.

175 (2) Make or use any false or misleading representation or
176 omit any material fact in the offer or sale of the services of a
177 broker or engage, directly or indirectly, in any act that
178 operates or would operate as fraud or deception upon any person
179 in connection with the offer or sale of the services of a
180 broker, notwithstanding the absence of reliance by the business.

181 (3) Make or use any false or deceptive representation in
182 its business dealings.

183 (4) Offer the services of a broker in any advertisement
184 without disclosing the actual address and telephone number of

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185 the business of the broker and the address and telephone number
186 of any forwarding service the broker may use, if any.

187 559.9615 Enforcement.—

188 (1) The Attorney General has exclusive authority to
189 enforce this part. The Attorney General may:

190 (a) Receive and act on complaints.

191 (b) Take action designed to obtain voluntary compliance
192 with this part.

193 (c) Commence administrative or judicial proceedings to
194 enforce compliance with this part.

195 (2) (a) A violation of this part is punishable by a fine of
196 \$500 per incident, not to exceed \$20,000 for all aggregated
197 violations, arising from the use of the transaction
198 documentation or materials found to be in violation of this
199 part.

200 (b) A violation of this part after receipt of a written
201 notice of a prior violation from the Attorney General is
202 punishable by a fine of \$1,000 per incident, not to exceed
203 \$50,000 for all aggregated violations, arising from the use of
204 the transaction documentation or materials found to be in
205 violation of this part.

206 (c) A violation of this part does not affect the
207 enforceability or validity of the underlying commercial
208 financing transaction.

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209 (3) This part does not create a private right of action
210 against any person or entity based upon compliance or
211 noncompliance with this part.

212 Section 2. This act shall take effect July 1, 2023.

213

214 -----

215 **T I T L E A M E N D M E N T**

216 Remove everything before the enacting clause and insert:

217 A bill to be entitled
218 An act relating to commercial financing product
219 brokers and providers; creating part XIII of ch. 559,
220 F.S., entitled "Florida Commercial Financing
221 Disclosure Law"; creating s. 559.961, F.S.; providing
222 a short title; creating s. 559.9611, F.S.; defining
223 terms; creating s. 559.9612, F.S.; providing
224 applicability; creating s. 559.9613, F.S.; requiring
225 providers that consummate commercial financing
226 transactions to provide specified written disclosures;
227 authorizing providers to provide specified required
228 disclosures when consummating a commercial financing
229 facility which are based on an example of a
230 transaction; specifying that disclosures are not
231 required under certain circumstances; creating s.
232 559.9614, F.S.; prohibiting brokers from taking
233 specified actions; creating s. 559.9615, F.S.;

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234 | providing exclusive authority of the Attorney General
235 | to enforce specified provisions; providing civil
236 | penalties; providing construction; providing an
237 | effective date.

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