

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Commerce Committee
 2 Representative Bankson offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

6 Section 1. Part XIII of chapter 559, Florida Statutes,
 7 consisting of sections 559.961, 559.9611, 559.9612, 559.9613,
 8 559.9614, and 559.9615, Florida Statutes, is created to read:

PART XIII

FLORIDA COMMERCIAL FINANCING DISCLOSURE LAW

11 559.961 Short title.—This part may be cited as the
 12 "Florida Commercial Financing Disclosure Law."

13 559.9611 Definitions.—As used in this part, the term:

14 (1) "Accounts receivable purchase transaction" means a
 15 transaction in which a business forwards or otherwise sells to a
 16 person all or a portion of the business's accounts or payment

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17 intangibles as those terms are defined in s. 679.1021 at a
18 discount to the expected value of the account or payment
19 intangibles. For purposes of this part, the provider's
20 characterization of an accounts receivable purchase transaction
21 as a purchase is conclusive that the accounts receivable
22 purchase transaction is not a loan or a transaction for the use,
23 forbearance, or detention of money.

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

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

35 (4) "Business" means a person or a group of persons, a
36 sole proprietorship, a corporation, a limited liability company,
37 a trust, an estate, a cooperative, an association, or a limited
38 or general partnership engaged in a 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

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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 be contained in an application, agreement, or other
56 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:

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.

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- 67 (9) "Depository institution" means:
68 (a) A bank, a trust company, or an industrial loan company
69 doing business under the authority of, or in accordance with, a
70 license, certificate, or charter issued by the United States,
71 this state, or any other state, district, territory, or
72 commonwealth of the United States which is authorized to
73 transact business in this state;
74 (b) A federally chartered savings and loan association,
75 federal savings bank, or federal credit union that is authorized
76 to transact business in this state; or
77 (c) A savings and loan association, savings bank, or
78 credit union organized under the laws of this or any other state
79 which is authorized to transact business in this state.
80 (10) "Provider" means a person who consummates more than
81 five commercial financing transactions with a business located
82 in this state in any calendar year. The term includes a person
83 who enters into a written agreement with a depository
84 institution to arrange a commercial financing transaction
85 between the depository institution and a business via an online
86 lending platform administered by the person. The fact that a
87 provider extends a specific offer for a commercial financing
88 transaction on behalf of a depository institution may not be
89 construed to mean that the provider engaged in lending or
90 financing or originated that loan or financing.

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91 559.9612 Scope of this part.--This part applies to any
92 commercial financing transaction consummated on or after January
93 1, 2024. This part does not apply to:

94 (1) A provider that is:

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

97 (b) A subsidiary or service corporation that is owned and
98 controlled by a federally insured depository institution or that
99 is under common ownership with a federally insured depository
100 institution.

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

103 (3) A commercial financing transaction that is:

104 (a) Secured by real property;

105 (b) A lease; or

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

110 (4) A commercial financing transaction in which the
111 recipient is a motor vehicle dealer or an affiliate of such a
112 dealer, or a vehicle rental company or an affiliate of such a
113 company, pursuant to a commercial loan or commercial open-end
114 credit plan of at least \$50,000 or a commercial financing
115 transaction offered by a person in connection with the sale or

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116 lease of products or services that such person manufactures,
117 licenses, or distributes, or whose parent company or any of its
118 directly or indirectly owned and controlled subsidiaries
119 manufactures, licenses, or distributes.

120 (5) A provider that is licensed as a money transmitter in
121 accordance with a license, certificate, or charter issued by
122 this state or any other state, district, territory, or
123 commonwealth of the United States.

124 (6) A provider that consummates no more than five
125 commercial financing transactions in this state in a 12-month
126 period.

127 (7) A commercial financing transaction of more than
128 \$500,000.

129 559.9613 Disclosures.-

130 (1) A provider that consummates a commercial financing
131 transaction shall provide a written disclosure of the terms of
132 the commercial financing transaction as required by this part.
133 The disclosures must be provided at or before consummation of
134 the transaction. Only one disclosure must be provided for each
135 commercial financing transaction, and a disclosure is not
136 required as result of a modification, forbearance, or change to
137 a consummated commercial financing transaction.

138 (2) A provider shall provide a written disclosure of the
139 following information in connection with each commercial
140 financing transaction:

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

143 (b) The total amount of funds disbursed to the business if
144 less than the amount specified in paragraph (a) as a result of
145 any fees deducted or withheld at disbursement, any amount paid
146 to the provider to satisfy a prior balance, and any amount paid
147 to a third party on behalf of the business.

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

150 (d) The total dollar cost under the terms of the
151 agreement, calculated by finding the difference between the
152 amount specified in paragraph (a) and the amount specified in
153 paragraph (c).

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

156 2. If the amount of the payments may vary, the manner and
157 frequency of the payments, the estimated amount of the initial
158 payment, a description of the methodology for calculating any
159 variable payment, and the circumstances under which payments may
160 vary.

161 (f) Whether there are any costs or discounts associated
162 with prepayment, including a reference to the provision in the
163 agreement which creates the contractual rights of the parties
164 related to prepayment.

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165 (3) A provider that consummates a commercial financing
166 facility may provide disclosures required by subsection (2)
167 based on an example of a transaction that could occur under the
168 agreement. The example shall be based on an accounts receivable
169 which has a total face amount owed of \$10,000. Only one
170 disclosure must be provided for the commercial financing
171 facility, and a disclosure is not required as a result of a
172 modification, forbearance, or change to the facility. For
173 purposes of clarity, a new disclosure is not required each time
174 an accounts receivable is purchased under the facility.

175 559.9614 Prohibited acts.—A broker may not do any of the
176 following:

177 (1) Assess, collect, or solicit an advance fee from a
178 business to provide services as a broker. However, this
179 subsection does not preclude a broker from soliciting a business
180 to pay for, or preclude a business from paying for, actual
181 services necessary to apply for a commercial financing
182 transaction, including, but not limited to, a credit check or an
183 appraisal of security, if such payment is made by check or money
184 order payable to a party independent of the broker.

185 (2) Make or use any false or misleading representation or
186 omit any material fact in the offer or sale of the services of a
187 broker or engage, directly or indirectly, in any act that
188 operates or would operate as fraud or deception upon any person

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189 in connection with the offer or sale of the services of a
190 broker, notwithstanding the absence of reliance by the business.

191 (3) Make or use any false or deceptive representation in
192 its business dealings.

193 (4) Offer the services of a broker in any advertisement
194 without disclosing the actual address and telephone number of
195 the business of the broker and the address and telephone number
196 of any forwarding service the broker may use, if any.

197 559.9615 Enforcement.—

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

200 (a) Receive and act on complaints.

201 (b) Take action designed to obtain voluntary compliance
202 with this part.

203 (c) Commence administrative or judicial proceedings to
204 enforce compliance with this part.

205 (2)(a) A violation of this part is punishable by a fine of
206 \$500 per incident, not to exceed \$20,000 for all aggregated
207 violations, arising from the use of the transaction
208 documentation or materials found to be in violation of this
209 part.

210 (b) A violation of this part after receipt of a written
211 notice of a prior violation from the Attorney General is
212 punishable by a fine of \$1,000 per incident, not to exceed
213 \$50,000 for all aggregated violations, arising from the use of

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214 the transaction documentation or materials found to be in
215 violation of this part.

216 (c) A violation of this part does not affect the
217 enforceability or validity of the underlying commercial
218 financing transaction.

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

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

223

224

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

225
226 Remove everything before the enacting clause and insert:

227 A bill to be entitled

228 An act relating to commercial financing product brokers and
229 providers; creating part XIII of ch. 559, F.S., entitled
230 "Florida Commercial Financing Disclosure Law"; creating s.
231 559.961, F.S.; providing a short title; creating s.
232 559.9611, F.S.; defining terms; creating s. 559.9612, F.S.;
233 providing applicability; creating s. 559.9613, F.S.;
234 requiring providers that consummate commercial financing
235 transactions to provide specified written disclosures;
236 creating s. 559.9614, F.S.; prohibiting brokers from taking
237 specified actions; creating s. 559.9615, F.S.; providing
238 exclusive authority of the Attorney General to enforce

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239 | specified provisions; providing civil penalties; providing
240 | construction; providing an effective date.