



26 "Florida Commercial Financing Disclosure Law."

27 559.9611 Definitions.—As used in this part, the term:

28 (1) "Accounts receivable purchase transaction" means a  
29 transaction in which a business forwards or otherwise sells to a  
30 person all or a portion of the business' accounts, as defined in  
31 s. 679.1021, or payment intangibles, as defined in s. 679.1021,  
32 at a discount to the expected value of the account or payment  
33 intangibles. For purposes of this part, the provider's  
34 characterization of an accounts receivable purchase transaction  
35 as a purchase is conclusive that the accounts receivable  
36 purchase transaction is not a loan or a transaction for the use,  
37 forbearance, or detention of money.

38 (2) "Advance fee" means any consideration that is assessed  
39 or collected by a broker before the closing of a commercial  
40 financing product transaction.

41 (3) "Broker" means a person who, for compensation or the  
42 expectation of compensation, arranges a commercial financing  
43 product transaction or an offer between a third party and a  
44 business in the state which would, if executed, be binding upon  
45 that third party. The term excludes a provider and any  
46 individual or entity whose compensation is not based or  
47 dependent upon on the terms of the specific commercial financing  
48 product transaction obtained or offered.

49 (4) "Business" means an individual or group of  
50 individuals, a sole proprietorship, a corporation, a limited

51 liability company, a trust, an estate, cooperative, an  
52 association, or a limited or general partnership engaged in a  
53 business activity.

54 (5) "Commercial financing product" means a commercial  
55 loan, accounts receivable purchase transaction, commercial open-  
56 end credit plan, or each to the extent the transaction is a  
57 business purpose transaction. As used in this subsection, the  
58 term "business purpose transaction" means a transaction the  
59 proceeds of which are provided to a business or are intended to  
60 be used to carry on a business and not for personal, family, or  
61 household purposes. For purposes of determining whether a  
62 transaction is a business purpose transaction, the provider may  
63 rely on any written statement of intended purpose signed by the  
64 business. The statement may be a separate statement or may be  
65 contained in an application, agreement, or other document signed  
66 by the business or the business owner.

67 (6) "Commercial loan" means a loan to a business, whether  
68 secured or unsecured.

69 (7) "Commercial open-end credit plan" means commercial  
70 financing extended by any provider under a plan in which:

71 (a) The provider reasonably contemplates repeat  
72 transactions.

73 (b) The amount of financing that may be extended to the  
74 business during the term of the plan, up to any limit set by the  
75 provider, is generally made available to the extent that any

76 outstanding balance is repaid.

77 (8) "Depository institution" means:

78 (a) A bank, a trust company, or an industrial loan company  
 79 doing business under the authority of, or in accordance with, a  
 80 license, certificate, or charter issued by the United States,  
 81 this state, or any other state, district, territory, or  
 82 commonwealth of the United States which is authorized to  
 83 transact business in this state;

84 (b) A federally chartered savings and loan association,  
 85 federal savings bank, or federal credit union that is authorized  
 86 to transact business in the state; or

87 (c) A savings and loan association, savings bank, or  
 88 credit union organized under the laws of this or any other state  
 89 which is authorized to transact business in the state.

90 (9) "Provider" means a person who consummates more than  
 91 five commercial financing product transactions to a business  
 92 located in the state in any calendar year. The term also  
 93 includes a person who enters into a written agreement with a  
 94 depository institution to arrange for the extension of a  
 95 commercial financing product by the depository institution to a  
 96 business via an online lending platform administered by the  
 97 person. The fact that a provider extends a specific offer for a  
 98 commercial financing product on behalf of a depository  
 99 institution may not be construed to mean that the provider  
 100 engaged in lending or financing or originated that loan or

101 financing.

102 559.9612 Scope of this part.—This part applies to any

103 commercial financing product transaction consummated on or after

104 January 1, 2024. This part does not apply to:

105 (1) A provider that is:

106 (a) A federally insured depository institution or an

107 affiliate or holding company of such institution; or

108 (b) A subsidiary or service corporation that is owned and

109 controlled by a federally insured depository institution.

110 (2) A provider that is a lender regulated under the Farm

111 Credit Act of 1971, 12 U.S.C. ss. 2001 et seq.

112 (3) A commercial financing product transaction that is:

113 (a) Secured by real property;

114 (b) A lease; or

115 (c) A purchase money obligation that is incurred as all or

116 part of the price of the collateral or for value given to enable

117 the business to acquire rights in or the use of the collateral

118 if the value is in fact so used.

119 (4) A commercial financing product transaction in which

120 the recipient is a motor vehicle dealer or an affiliate of such

121 a dealer, or a vehicle rental company or an affiliate of such a

122 company, pursuant to a commercial loan or commercial open-end

123 credit plan of at least \$50,000 or a commercial financing

124 product offered by a person in connection with the sale or lease

125 of products or services that such person manufactures, licenses,

126 or distributes, or whose parent company or any of its directly  
127 or indirectly owned and controlled subsidiaries manufacturers,  
128 licenses or distributes.

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

133 (6) A provider that consummates no more than five  
134 commercial financing product transactions in the state in a 12-  
135 month period.

136 (7) A commercial financing product transaction of more  
137 than \$500,000.

138 559.9613 Disclosures.—

139 (1) A provider that consummates a commercial financing  
140 product transaction shall disclose the terms of the commercial  
141 financing product transaction as required by this part. The  
142 disclosures must be provided at or before consummation of the  
143 transaction. Only one disclosure must be provided for each  
144 commercial financing product transaction, and a disclosure is  
145 not required as result of a modification, forbearance, or change  
146 to a consummated commercial financing product transaction.

147 (2) A provider must disclose the following information in  
148 connection with each commercial financing product transaction:

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

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

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

158        (d) The total dollar cost under the terms of the  
159 agreement, calculated by finding the difference between the  
160 amount specified in paragraph (a) and the amount specified in  
161 paragraph (c).

162        (e) The manner, frequency, and amount of each payment. If  
163 the payments may vary, the provider shall instead disclose the  
164 manner, frequency, and the estimated amount of the initial  
165 payment and a description of the methodology for calculating any  
166 variable payment and the circumstances when payments may vary.

167        (f) A statement of whether there are any costs or  
168 discounts associated with prepayment, including a reference to  
169 the paragraph in the agreement which creates the contractual  
170 rights of the parties related to prepayment.

171        559.9614 Prohibited acts.—A broker may not:

172        (1) Assess, collect, or solicit an advance fee from a  
173 business to provide services as a broker. However, this  
174 subsection does not preclude a broker from soliciting a business  
175 to pay for, or preclude a business from paying for, actual

176 services necessary to apply for a commercial financing product,  
177 including, but not limited to, a credit check or an appraisal of  
178 security, if such payment is made by check or money order  
179 payable to a party independent of the broker;

180 (2) Make or use any false or misleading representation or  
181 omit any material fact in the offer or sale of the services of a  
182 broker or engage, directly or indirectly, in any act that  
183 operates or would operate as fraud or deception upon any person  
184 in connection with the offer or sale of the services of a  
185 broker, notwithstanding the absence of reliance by the business;

186 (3) Make or use any false or deceptive representation in  
187 its business dealings; or

188 (4) Offer the services of a broker by making, publishing,  
189 disseminating, circulating, or placing before the public within  
190 the state an advertisement in a newspaper or other publication  
191 or an advertisement in the form of a book, notice, handbill,  
192 poster, sign, billboard, bill, circular, pamphlet, letter,  
193 photograph, or motion picture or an advertisement circulated by  
194 radio, loudspeaker, telephone, television, telegraph, or in any  
195 other way, in which the offer or advertisement does not disclose  
196 the name, business address, and telephone number of the broker.  
197 For purposes of this subsection, the broker shall disclose the  
198 actual address and telephone number of the business of the  
199 broker in addition to the address and telephone number of any  
200 forwarding service that the broker may use.

201        559.9615 Enforcement.-

202        (1) The Attorney General has exclusive authority to

203 enforce this part. The Attorney General may:

204        (a) Receive and act on complaints.

205        (b) Take action designed to obtain voluntary compliance

206 with this part.

207        (c) Commence administrative or judicial proceedings to

208 enforce compliance with this part.

209        (2)(a) A violation of any provision of this part is

210 punishable by a fine of \$500 per incident, not to exceed \$20,000

211 for all aggregated violations arising from the use of the

212 transaction documentation or materials found to be in violation

213 of this part.

214        (b) A violation of any provision of this part after

215 receipt of a written notice of a prior violation from the

216 Attorney General is punishable by a fine of \$1,000 per incident,

217 not to exceed \$50,000 for all aggregated violations arising from

218 the use of the transaction documentation or materials found to

219 be in violation of this part.

220        (c) A violation of any provision of this part does not

221 affect the enforceability or validity of the underlying

222 commercial financing product transaction.

223        (3) Nothing in this part creates or is intended to create

224 a private right of action against any person or entity based

225 upon compliance or noncompliance with the provisions of this

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2023

226 | part.

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