

1 A bill to be entitled
 2 An act relating to commercial financing product
 3 brokers and providers; creating part XIII of ch. 559,
 4 F.S., entitled "Florida Commercial Financing
 5 Disclosure Law"; creating s. 559.961, F.S.; providing
 6 a short title; creating s. 559.9611, F.S.; defining
 7 terms; creating s. 559.9612, F.S.; providing
 8 applicability; creating s. 559.9613, F.S.; requiring
 9 providers that consummate commercial financing
 10 transactions to provide specified written disclosures;
 11 creating s. 559.9614, F.S.; prohibiting brokers from
 12 taking specified actions; creating s. 559.9615, F.S.;
 13 providing exclusive authority of the Attorney General
 14 to enforce specified provisions; providing civil
 15 penalties; providing construction; providing an
 16 effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Part XIII of chapter 559, Florida Statutes,
 21 consisting of sections 559.961, 559.9611, 559.9612, 559.9613,
 22 559.9614, and 559.9615, Florida Statutes, is created to read:

23 PART XIII

24 FLORIDA COMMERCIAL FINANCING DISCLOSURE LAW

25 559.961 Short title.—This part may be cited as the

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's accounts or payment
 31 | intangibles as those terms are defined in s. 679.1021(1) at a
 32 | 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 transaction.
 41 | (3) "Broker" means a person who, for compensation or the
 42 | expectation of compensation, arranges a commercial financing
 43 | transaction or an offer between a third party and a business in
 44 | this state which would, if executed, be binding upon that third
 45 | party. The term excludes a provider and any person or entity
 46 | whose compensation is not based or dependent upon the terms of
 47 | the specific commercial financing transaction obtained or
 48 | offered.
 49 | (4) "Business" means a person or a group of persons, a
 50 | sole proprietorship, a corporation, a limited liability company,

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

53 (5) "Commercial financing facility" means a provider's
54 plan for purchasing multiple accounts receivable from the
55 recipient over a period of time pursuant to an agreement that
56 sets forth the terms and conditions governing the use of the
57 facility.

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

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

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

75 (a) The provider reasonably contemplates repeat

76 transactions.

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

81 (9) "Depository institution" means:

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

88 (b) A federally chartered savings and loan association, a
 89 federal savings bank, or a federal credit union that is
 90 authorized to transact business in this state; or

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

94 (10) "Provider" means a person who consummates more than
 95 five commercial financing transactions with a business located
 96 in this state in any calendar year. The term includes a person
 97 who enters into a written agreement with a depository
 98 institution to arrange a commercial financing transaction
 99 between the depository institution and a business via an online
 100 lending platform administered by the person. The fact that a

101 provider extends a specific offer for a commercial financing
102 transaction on behalf of a depository institution may not be
103 construed to mean that the provider engaged in lending or
104 financing or originated that loan or financing.

105 559.9612 Scope of this part.—This part applies to any
106 commercial financing transaction consummated on or after January
107 1, 2024. This part does not apply to:

108 (1) A provider that is:

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

111 (b) A subsidiary or service corporation that is owned and
112 controlled by a federally insured depository institution or that
113 is under common ownership with a federally insured depository
114 institution.

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

117 (3) A commercial financing transaction that is:

118 (a) Secured by real property;

119 (b) A lease; or

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

124 (4) A commercial financing transaction in which the
125 recipient is a motor vehicle dealer or an affiliate of such a

126 dealer, or a vehicle rental company or an affiliate of such a
 127 company, pursuant to a commercial loan or commercial open-end
 128 credit plan of at least \$50,000 or a commercial financing
 129 transaction offered by a person in connection with the sale or
 130 lease of products or services that such person manufactures,
 131 licenses, or distributes, or whose parent company or any of its
 132 directly or indirectly owned and controlled subsidiaries
 133 manufactures, licenses, or distributes.

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

138 (6) A provider that consummates no more than five
 139 commercial financing transactions in this state in a 12-month
 140 period.

141 (7) A commercial financing transaction of more than
 142 \$500,000.

143 559.9613 Disclosures.—

144 (1) A provider that consummates a commercial financing
 145 transaction shall provide a written disclosure of the terms of
 146 the commercial financing transaction as required by subsection
 147 (2). The disclosure must be provided at or before consummation
 148 of the transaction. Only one disclosure must be provided for
 149 each commercial financing transaction, and a disclosure is not
 150 required as result of a modification, forbearance, or change to

151 a consummated commercial financing transaction.

152 (2) A provider shall provide a written disclosure of the
153 following information in connection with each commercial
154 financing transaction:

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

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

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

164 (d) The total dollar cost under the terms of the
165 agreement, calculated by finding the difference between the
166 amount specified in paragraph (a) and the amount specified in
167 paragraph (c).

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

170 2. If the amount of the payments may vary, the manner and
171 frequency of the payments, the estimated amount of the initial
172 payment, a description of the methodology for calculating any
173 variable payment, and the circumstances under which payments may
174 vary.

175 (f) Whether there are any costs or discounts associated

176 with prepayment, including a reference to the provision in the
177 agreement which creates the contractual rights of the parties
178 related to prepayment.

179 (3) A provider that consummates a commercial financing
180 facility may provide the disclosure required by subsection (2)
181 based on an example of a transaction that could occur under the
182 agreement. The example shall be based on an accounts receivable
183 that has a total face amount owed of \$10,000. Only one
184 disclosure must be provided for the commercial financing
185 facility, and a disclosure is not required as a result of a
186 modification, forbearance, or change to the facility. For
187 purposes of clarity, a new disclosure is not required each time
188 an accounts receivable is purchased under the facility.

189 559.9614 Prohibited acts.—A broker may not do any of the
190 following:

191 (1) Assess, collect, or solicit an advance fee from a
192 business to provide services as a broker. However, this
193 subsection does not preclude a broker from soliciting a business
194 to pay for, or preclude a business from paying for, actual
195 services necessary to apply for a commercial financing
196 transaction, including, but not limited to, a credit check or an
197 appraisal of security, if such payment is made by check or money
198 order payable to a party independent of the broker.

199 (2) Make or use any false or misleading representation or
200 omit any material fact in the offer or sale of the services of a

201 broker or engage, directly or indirectly, in any act that
202 operates or would operate as fraud or deception upon any person
203 in connection with the offer or sale of the services of a
204 broker, notwithstanding the absence of reliance by the business.

205 (3) Make or use any false or deceptive representation in
206 its business dealings.

207 (4) Offer the services of a broker in any advertisement
208 without disclosing the actual address and telephone number of
209 the business of the broker and the address and telephone number
210 of any forwarding service the broker may use, if any.

211 559.9615 Enforcement.—

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

214 (a) Receive and act on complaints.

215 (b) Take action designed to obtain voluntary compliance
216 with this part.

217 (c) Commence administrative or judicial proceedings to
218 enforce compliance with this part.

219 (2)(a) A violation of this part is punishable by a fine of
220 \$500 per incident, not to exceed \$20,000 for all aggregated
221 violations, arising from the use of the transaction
222 documentation or materials found to be in violation of this
223 part.

224 (b) A violation of this part after receipt of a written
225 notice of a prior violation from the Attorney General is

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226 punishable by a fine of \$1,000 per incident, not to exceed
227 \$50,000 for all aggregated violations, arising from the use of
228 the transaction documentation or materials found to be in
229 violation of this part.

230 (c) A violation of this part does not affect the
231 enforceability or validity of the underlying commercial
232 financing transaction.

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

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