

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          authorizing providers to provide specified required  
 12          disclosures when consummating a commercial financing  
 13          facility which are based on an example of a  
 14          transaction; specifying that disclosures are not  
 15          required under certain circumstances; creating s.  
 16          559.9614, F.S.; prohibiting brokers from taking  
 17          specified actions; creating s. 559.9615, F.S.;  
 18          providing exclusive authority of the Attorney General  
 19          to enforce specified provisions; providing civil  
 20          penalties; providing construction; providing an  
 21          effective date.

22  
 23   Be It Enacted by the Legislature of the State of Florida:

24  
 25          Section 1.   Part XIII of chapter 559, Florida Statutes,

26 consisting of sections 559.961, 559.9611, 559.9612, 559.9613,  
27 559.9614, and 559.9615, Florida Statutes, is created to read:

28 PART XIII

29 FLORIDA COMMERCIAL FINANCING DISCLOSURE LAW

30 559.961 Short title.—This part may be cited as the  
31 "Florida Commercial Financing Disclosure Law."

32 559.9611 Definitions.—As used in this part, the term:

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

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

46 (3) "Broker" means a person who, for compensation or the  
47 expectation of compensation, arranges a commercial financing  
48 transaction or an offer between a third party and a business in  
49 this state which would, if executed, be binding upon that third  
50 party. The term excludes a provider and any individual or entity

51 whose compensation is not based or dependent upon the terms of  
52 the specific commercial financing transaction obtained or  
53 offered.

54 (4) "Business" means an individual or a group of  
55 individuals, a sole proprietorship, a corporation, a limited  
56 liability company, a trust, an estate, a cooperative, an  
57 association, or a limited or general partnership engaged in a  
58 business activity.

59 (5) "Commercial financing facility" means a provider's  
60 plan for purchasing multiple accounts receivable from the  
61 recipient over a period of time pursuant to an agreement that  
62 sets forth the terms and conditions governing the use of the  
63 facility.

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

76 other document signed by the business or the business owner.

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

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

81 (a) The provider reasonably contemplates repeat  
 82 transactions.

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

87 (9) "Depository institution" means a Florida state-  
 88 chartered bank, savings bank, credit union, or trust company, or  
 89 a federal savings or thrift association, bank, credit union,  
 90 savings bank, or thrift.

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

101 financing or originated that loan or financing.  
 102 559.9612 Scope of this part.—This part applies to any  
 103 commercial financing transaction consummated on or after January  
 104 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 or  
 110 under common ownership with such institution.  
 111 (2) A provider that is a lender regulated under the Farm  
 112 Credit Act of 1971, 12 U.S.C. ss. 2001 et seq.  
 113 (3) A commercial financing transaction that is:  
 114 (a) Secured by real property;  
 115 (b) A lease; or  
 116 (c) A purchase money obligation that is incurred as all or  
 117 part of the price of the collateral or for value given to enable  
 118 the business to acquire rights in or the use of the collateral  
 119 if the value is in fact so used.  
 120 (4) A commercial financing transaction in which the  
 121 recipient is a motor vehicle dealer or an affiliate of such a  
 122 dealer, or a vehicle rental company or an affiliate of such a  
 123 company, pursuant to a commercial loan or commercial open-end  
 124 credit plan of at least \$50,000 or a commercial financing  
 125 transaction offered by a person in connection with the sale or

126 lease of products or services that such person manufactures,  
127 licenses, or distributes, or whose parent company or any of its  
128 directly or indirectly owned and controlled subsidiaries  
129 manufactures, licenses, or distributes.

130 (5) A provider that is licensed as a money transmitter  
131 under chapter 560 or licensed as a money transmitter by any  
132 other state, district, territory, or commonwealth of the United  
133 States.

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

137 (7) A commercial financing transaction of more than  
138 \$500,000.

139 559.9613 Disclosures.—

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

148 (2) A provider shall provide a written disclosure of the  
149 following information in connection with each commercial  
150 financing transaction:

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

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

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

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

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

166 2. If the amount of the payments may vary, the manner and  
167 frequency of the payments, the estimated amount of the initial  
168 payment, a description of the methodology for calculating any  
169 variable payment, and the circumstances under which payments may  
170 vary.

171 (f) Whether there are any costs or discounts associated  
172 with prepayment, including a reference to the provision in the  
173 agreement which creates the contractual rights of the parties  
174 related to prepayment.

175 (3) A provider that consummates a commercial financing

176 facility may provide disclosures required by subsection (2)  
177 which are based on an example of a transaction that could occur  
178 under the agreement. The example must be based on an account  
179 receivable total face amount owed of \$10,000. Only one  
180 disclosure is required for each commercial financing facility,  
181 and a disclosure is not required as result of a modification,  
182 forbearance, or change to the facility. A new disclosure is not  
183 required each time accounts receivable are purchased under the  
184 facility.

185 559.9614 Prohibited acts.—A broker may not do any of the  
186 following:

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

195 (2) Make or use any false or misleading representation or  
196 omit any material fact in the offer or sale of the services of a  
197 broker or engage, directly or indirectly, in any act that  
198 operates or would operate as fraud or deception upon any person  
199 in connection with the offer or sale of the services of a  
200 broker, notwithstanding the absence of reliance by the business.



201       (3) Make or use any false or deceptive representation in  
 202 its business dealings.

203       (4) Offer the services of a broker in any advertisement  
 204 without disclosing the actual address and telephone number of  
 205 the business of the broker and the address and telephone number  
 206 of any forwarding service the broker may use, if any.

207       559.9615 Enforcement.—

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

210       (a) Receive and act on complaints.

211       (b) Take action designed to obtain voluntary compliance  
 212 with this part.

213       (c) Commence administrative or judicial proceedings to  
 214 enforce compliance with this part.

215       (2)(a) A violation of this part is punishable by a fine of  
 216 \$500 per incident, not to exceed \$20,000 for all aggregated  
 217 violations, arising from the use of the transaction  
 218 documentation or materials found to be in violation of this  
 219 part.

220       (b) A violation of this part after receipt of a written  
 221 notice of a prior violation from the Attorney General is  
 222 punishable by a fine of \$1,000 per incident, not to exceed  
 223 \$50,000 for all aggregated violations, arising from the use of  
 224 the transaction documentation or materials found to be in  
 225 violation of this part.

226        (c) A violation of this part does not affect the  
227 enforceability or validity of the underlying commercial  
228 financing transaction.

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

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