



180480

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2023	.	
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	.	

The Committee on Banking and Insurance (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete 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



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11 Commercial Financing Disclosure Law.”
12 559.9611 Definitions.—As used in this part, the term:
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 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
37 association, or a limited or general partnership engaged in a
38 business activity.
39 (5) “Commercial financing transaction” means a commercial



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

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

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

56 (a) The provider reasonably contemplates repeat
57 transactions.

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

62 (8) "Depository institution" means:

63 (a) A bank, a trust company, or an industrial loan company
64 doing business under the authority of, or in accordance with, a
65 license, certificate, or charter issued by the United States,
66 this state, or any other state, district, territory, or
67 commonwealth of the United States which is authorized to
68 transact business in this state;



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69 (b) A federally chartered savings and loan association,
70 federal savings bank, or federal credit union that is authorized
71 to transact business in this state; or

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

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

86 559.9612 Scope of this part.—This part applies to any
87 commercial financing transaction consummated on or after January
88 1, 2024. This part does not apply to:

89 (1) A provider that is:

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

92 (b) A subsidiary or service corporation that is owned and
93 controlled by a federally insured depository institution.

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

96 (3) A commercial financing transaction that is:

97 (a) Secured by real property;



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98 (b) A lease; or

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

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

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

117 (6) A provider that consummates no more than five
118 commercial financing transactions in this state in a 12-month
119 period.

120 (7) A commercial financing transaction of more than
121 \$500,000.

122 559.9613 Disclosures.-

123 (1) A provider that consummates a commercial financing
124 transaction shall provide a written disclosure of the terms of
125 the commercial financing transaction as required by this part.
126 The disclosures must be provided at or before consummation of



127 the transaction. Only one disclosure must be provided for each
128 commercial financing transaction, and a disclosure is not
129 required as result of a modification, forbearance, or change to
130 a consummated commercial financing transaction.

131 (2) A provider shall provide a written disclosure of the
132 following information in connection with each commercial
133 financing transaction:

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

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

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

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

147 (e)1. The manner, frequency, and amount of each payment; or
148 2. If the amount of the payments may vary, the provider
149 must instead disclose the manner and frequency of the payments,
150 the estimated amount of the initial payment, a description of
151 the methodology for calculating any variable payment, and the
152 circumstances under which payments may vary.

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



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156 related to prepayment.

157 559.9614 Prohibited acts.—A broker may not do any of the
158 following:

159 (1) Assess, collect, or solicit an advance fee from a
160 business to provide services as a broker. However, this
161 subsection does not preclude a broker from soliciting a business
162 to pay for, or preclude a business from paying for, actual
163 services necessary to apply for a commercial financing
164 transaction, including, but not limited to, a credit check or an
165 appraisal of security, if such payment is made by check or money
166 order payable to a party independent of the broker.

167 (2) Make or use any false or misleading representation or
168 omit any material fact in the offer or sale of the services of a
169 broker or engage, directly or indirectly, in any act that
170 operates or would operate as fraud or deception upon any person
171 in connection with the offer or sale of the services of a
172 broker, notwithstanding the absence of reliance by the business.

173 (3) Make or use any false or deceptive representation in
174 its business dealings.

175 (4) Offer the services of a broker in any advertisement
176 without disclosing the actual address and telephone number of
177 the business of the broker and the address and telephone number
178 of any forwarding service the broker may use, if any.

179 559.9615 Enforcement.—

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

182 (a) Receive and act on complaints.

183 (b) Take action designed to obtain voluntary compliance
184 with this part.



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185 (c) Commence administrative or judicial proceedings to
186 enforce compliance with this part.

187 (2) (a) A violation of this part is punishable by a fine of
188 \$500 per incident, not to exceed \$20,000 for all aggregated
189 violations arising from the use of the transaction documentation
190 or materials found to be in violation of this part.

191 (b) A violation of this part after receipt of a written
192 notice of a prior violation from the Attorney General is
193 punishable by a fine of \$1,000 per incident, not to exceed
194 \$50,000 for all aggregated violations arising from the use of
195 the transaction documentation or materials found to be in
196 violation of this part.

197 (c) A violation of this part does not affect the
198 enforceability or validity of the underlying commercial
199 financing transaction.

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

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

204
205 ===== T I T L E A M E N D M E N T =====

206 And the title is amended as follows:

207 Delete everything before the enacting clause
208 and insert:

209 A bill to be entitled
210 An act relating to commercial financing transaction
211 brokers and providers; creating part XIII of ch. 559,
212 F.S., entitled "Florida Commercial Financing
213 Disclosure Law"; creating s. 559.961, F.S.; providing



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214 a short title; creating s. 559.9611, F.S.; defining
215 terms; creating s. 559.9612, F.S.; providing
216 applicability; creating s. 559.9613, F.S.; requiring
217 providers that consummate commercial financing
218 transactions to provide specified written disclosures;
219 creating s. 559.9614, F.S.; prohibiting brokers from
220 taking specified actions; creating s. 559.9615, F.S.;
221 providing exclusive authority of the Attorney General
222 to enforce specified provisions; providing civil
223 penalties; providing construction; providing an
224 effective date.