

By the Committee on Banking and Insurance; and Senator Brodeur

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1 A bill to be entitled
2 An act relating to commercial financing transaction
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.

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

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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 "Florida
26 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

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30 person all or a portion of the business's accounts or payment
31 intangibles as those terms are defined in s. 679.1021 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 individual 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 an individual or a group of
50 individuals, a sole proprietorship, a corporation, a limited
51 liability company, a trust, an estate, a cooperative, an
52 association, or a limited or general partnership engaged in a
53 business activity.

54 (5) "Commercial financing transaction" means a commercial
55 loan, an accounts receivable purchase transaction, or a
56 commercial open-end credit plan to the extent the transaction is
57 also a business purpose transaction. As used in this subsection,
58 the term "business purpose transaction" means a transaction the

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59 proceeds of which are provided to a business or are intended to
60 be used to carry on a business and not to be used for personal,
61 family, or household purposes. For purposes of determining
62 whether a transaction is a business purpose transaction, the
63 provider may rely on any written statement of intended purpose
64 signed by the business. The statement may be a separate
65 statement or may be contained in an application, agreement, or
66 other document signed 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 this state; or

87 (c) A savings and loan association, savings bank, or credit

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88 union organized under the laws of this or any other state which
89 is authorized to transact business in this state.

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

101 559.9612 Scope of this part.—This part applies to any
102 commercial financing transaction consummated on or after January
103 1, 2024. This part does not apply to:

104 (1) A provider that is:

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

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

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

111 (3) A commercial financing transaction that is:

112 (a) Secured by real property;

113 (b) A lease; or

114 (c) A purchase money obligation that is incurred as all or
115 part of the price of the collateral or for value given to enable
116 the business to acquire rights in or the use of the collateral

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117 if the value is in fact so used.

118 (4) A commercial financing transaction in which the
119 recipient is a motor vehicle dealer or an affiliate of such a
120 dealer, or a vehicle rental company or an affiliate of such a
121 company, pursuant to a commercial loan or commercial open-end
122 credit plan of at least \$50,000 or a commercial financing
123 transaction offered by a person in connection with the sale or
124 lease of products or services that such person manufactures,
125 licenses, or distributes, or whose parent company or any of its
126 directly or indirectly owned and controlled subsidiaries
127 manufactures, licenses, or distributes.

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

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

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

137 559.9613 Disclosures.-

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

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146 (2) A provider shall provide a written disclosure of the
147 following information in connection with each commercial
148 financing 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 agreement,
159 calculated by finding the difference between the amount
160 specified in paragraph (a) and the amount specified in paragraph
161 (c).

162 (e) 1. The manner, frequency, and amount of each payment; or
163 2. If the amount of the payments may vary, the provider
164 must instead disclose the manner and frequency of the payments,
165 the estimated amount of the initial payment, a description of
166 the methodology for calculating any variable payment, and the
167 circumstances under which payments may vary.

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

172 599.9614 Prohibited acts.—A broker may not do any of the
173 following:

174 (1) Assess, collect, or solicit an advance fee from a

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

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

188 (3) Make or use any false or deceptive representation in
189 its business dealings.

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

194 559.9615 Enforcement.—

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

197 (a) Receive and act on complaints.

198 (b) Take action designed to obtain voluntary compliance
199 with this part.

200 (c) Commence administrative or judicial proceedings to
201 enforce compliance with this part.

202 (2) (a) A violation of this part is punishable by a fine of
203 \$500 per incident, not to exceed \$20,000 for all aggregated

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204 violations arising from the use of the transaction documentation
205 or materials found to be in violation of this part.

206 (b) A violation of this part after receipt of a written
207 notice of a prior violation from the Attorney General is
208 punishable by a fine of \$1,000 per incident, not to exceed
209 \$50,000 for all aggregated violations arising from the use of
210 the transaction documentation or materials found to be in
211 violation of this part.

212 (c) A violation of this part does not affect the
213 enforceability or validity of the underlying commercial
214 financing transaction.

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

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