

By the Appropriations Committee on Criminal and Civil Justice;
the Committee on Banking and Insurance; and Senator Brodeur

604-03966-23

20231624c2

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

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Part XIII of chapter 559, Florida Statutes,
25 consisting of sections 559.961, 559.9611, 559.9612, 559.9613,
26 559.9614, and 559.9615, Florida Statutes, is created to read:

27 PART XIII

28 FLORIDA COMMERCIAL FINANCING DISCLOSURE LAW

29 559.961 Short title.—This part may be cited as the "Florida

604-03966-23

20231624c2

30 Commercial Financing Disclosure Law."

31 559.9611 Definitions.—As used in this part, the term:

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

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

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

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

58 (5) "Commercial financing facility" means a provider's plan

604-03966-23

20231624c2

59 for purchasing multiple accounts receivable from the recipient
60 over a period of time pursuant to an agreement that sets forth
61 the terms and conditions governing the use of the facility.

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

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

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

79 (a) The provider reasonably contemplates repeat
80 transactions.

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

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

604-03966-23

20231624c2

88 savings bank, or thrift.

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

100 559.9612 Scope of this part.—This part applies to any
101 commercial financing transaction consummated on or after January
102 1, 2024. This part does not apply to:

103 (1) A provider that is:

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

106 (b) A subsidiary or service corporation that is owned and
107 controlled by a federally insured depository institution or
108 under common ownership with such 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

604-03966-23

20231624c2

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
129 under chapter 560 or licensed as a money transmitter by any
130 other state, district, territory, or commonwealth of the United
131 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 disclosure must be provided at or before consummation of the
142 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.

604-03966-23

20231624c2

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 (3) A provider that consummates a commercial financing
173 facility may provide disclosures required by subsection (2)
174 which are based on an example of a transaction that could occur

604-03966-23

20231624c2

175 under the agreement. The example must be based on an account
176 receivable total face amount owed of \$10,000. Only one
177 disclosure is required for each commercial financing facility,
178 and a disclosure is not required as result of a modification,
179 forbearance, or change to the facility. A new disclosure is not
180 required each time accounts receivable are purchased under the
181 facility.

182 559.9614 Prohibited acts.—A broker may not do any of the
183 following:

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

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

198 (3) Make or use any false or deceptive representation in
199 its business dealings.

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

604-03966-23

20231624c2

204 559.9615 Enforcement.—

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

207 (a) Receive and act on complaints.

208 (b) Take action designed to obtain voluntary compliance
209 with this part.

210 (c) Commence administrative or judicial proceedings to
211 enforce compliance with this part.

212 (2) (a) A violation of this part is punishable by a fine of
213 \$500 per incident, not to exceed \$20,000 for all aggregated
214 violations arising from the use of the transaction documentation
215 or materials found to be in violation of this part.

216 (b) A violation of this part after receipt of a written
217 notice of a prior violation from the Attorney General is
218 punishable by a fine of \$1,000 per incident, not to exceed
219 \$50,000 for all aggregated violations arising from the use of
220 the transaction documentation or materials found to be in
221 violation of this part.

222 (c) A violation of this part does not affect the
223 enforceability or validity of the underlying commercial
224 financing transaction.

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

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