

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Substitute for Senate Bill No. 181, Page 17,
2 Section 387.435, Line 9, by inserting after all of said section and line the following:

3
4 "427.300. 1. This section shall be known, and may be cited as, the "Commercial Financing
5 Disclosure Law".

6 2. For purposes of this section, the following terms mean:

7 (1) "Account":

8 (a) Includes:

9 a. A right to payment of a monetary obligation, whether or not earned by performance, for
10 one of the following:

11 (i) Property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed
12 of;

13 (ii) Services rendered or to be rendered;

14 (iii) A policy of insurance issued or to be issued;

15 (iv) A secondary obligation incurred or to be incurred;

16 (v) Energy provided or to be provided;

17 (vi) The use or hire of a vessel under a charter or other contract;

18 (vii) Arising out of the use of a credit or charge card or information contained on or for use
19 with the card; or

20 (viii) As winnings in a lottery or other game of chance operated or sponsored by a state,
21 governmental unit of a state, or person licensed or authorized to operate the game by a state or
22 governmental unit of a state; and

23 b. Health care insurance receivables; and

24 (b) Shall not include:

25 a. Rights to payment evidenced by chattel paper or an instrument;

26 b. Commercial tort claims;

27 c. Deposit accounts;

28 d. Investment property;

29 e. Letter-of-credit rights or letters of credit; or

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1 f. Rights to payment for moneys or funds advanced or sold, other than rights arising out of
2 the use of a credit or charge card or information contained on or for use with the card;

3 (2) "Accounts receivable purchase transaction", any transaction in which the business
4 forwards or otherwise sells to the provider all or a portion of the business's accounts or payment
5 intangibles at a discount to their expected value. For purposes of this section, the provider's
6 characterization of an accounts receivable purchase transaction as a purchase is conclusive that the
7 accounts receivable purchase transaction is not a loan or a transaction for the use, forbearance, or
8 detention of moneys;

9 (3) "Broker", any person who, for compensation or the expectation of compensation, obtains
10 a commercial financing product or an offer for a commercial financing product from a third party
11 that would, if executed, be binding upon that third party and communicates that offer to a business
12 located in this state. The term "broker" excludes a "provider", or any individual or entity whose
13 compensation is not based or dependent upon the terms of the specific commercial financing
14 product obtained or offered;

15 (4) "Business", an individual or group of individuals, sole proprietorship, corporation,
16 limited liability company, trust, estate, cooperative, association, or limited or general partnership
17 engaged in a business activity;

18 (5) "Business purpose transaction", any transaction where the proceeds are provided to a
19 business or are intended to be used to carry on a business and not for personal, family, or household
20 purposes. For purposes of determining whether a transaction is a business purpose transaction, the
21 provider may rely on any written statement of intended purpose signed by the business. The
22 statement may be a separate statement or may be contained in an application, agreement, or other
23 document signed by the business or the business owner or owners;

24 (6) "Commercial financing product", any commercial loan, accounts receivable purchase
25 transaction, commercial open-end credit plan, or each to the extent the transaction is a business
26 purpose transaction;

27 (7) "Commercial loan", a loan to a business, whether secured or unsecured;

28 (8) "Commercial open-end credit plan", commercial financing extended by any provider
29 under a plan in which:

30 (a) The provider reasonably contemplates repeat transactions; and

31 (b) The amount of financing that may be extended to the business during the term of the
32 plan, up to any limit set by the provider, is generally made available to the extent that any
33 outstanding balance is repaid;

34 (9) "Depository institution", any of the following:

35 (a) A bank, trust company, or industrial loan company doing business under the authority of,
36 or in accordance with, a license, certificate, or charter issued by the United States, this state, or any
37 other state, district, territory, or commonwealth of the United States that is authorized to transact
38 business in this state;

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

3 (c) A savings and loan association, savings bank, or credit union organized under the laws
4 of this or any other state that is authorized to transact business in this state;

5 (10) "General intangible", any personal property, including things in action, other than
6 accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments,
7 investment property, letter-of-credit rights, letters of credit, moneys, and oil, gas, or other minerals
8 before extraction. "General intangible" also includes payment intangibles and software;

9 (11) "Payment intangible", a general intangible under which the account debtor's principal
10 obligation is a monetary obligation;

11 (12) "Provider", a person who consummates more than five commercial financing products
12 to a business located in this state in any calendar year. "Provider" also includes a person who enters
13 into a written agreement with a depository institution to arrange for the extension of a commercial
14 financing product by the depository institution to a business via an online lending platform
15 administered by the person. The fact that a provider extends a specific offer for a commercial
16 financing product on behalf of a depository institution shall not be construed to mean that the
17 provider engaged in lending or financing or originated such loan or financing.

18 3. (1) A provider who consummates a commercial financing product shall disclose the
19 terms of the commercial financing product as required by this section. The disclosures shall be
20 provided at or before consummation of the transaction. Only one disclosure is required for each
21 commercial financing product, and a disclosure is not required as a result of the modification,
22 forbearance, or change to a consummated commercial financing product.

23 (2) A provider shall disclose the following in connection with each commercial financing
24 product:

25 (a) The total amount of funds provided to the business under the terms of the commercial
26 financing product. This disclosure shall be labeled "Total Amount of Funds Provided";

27 (b) The total amount of funds disbursed to the business under the terms of the commercial
28 financing product, if less than the total amount of funds provided, as a result of any fees deducted or
29 withheld at disbursement and any amount paid to a third party on behalf of the business. This
30 disclosure shall be labeled "Total Amount of Funds Disbursed";

31 (c) The total amount to be paid to the provider pursuant to the commercial financing product
32 agreement. This disclosure shall be labeled "Total of Payments";

33 (d) The total dollar cost of the commercial financing product under the terms of the
34 agreement, derived by subtracting the total amount of funds provided from the total of payments.
35 This calculation shall include any fees or charges deducted by the provider from the "Total Amount
36 of Funds Provided". This disclosure shall be labeled "Total Dollar Cost of Financing";

37 (e) The manner, frequency, and amount of each payment. This disclosure shall be labeled
38 "Payments". If the payments may vary, the provider shall instead disclose the manner, frequency,
39 and the estimated amount of the initial payment labeled "Estimated Payments", and the commercial

1 financing product agreement shall include a description of the methodology for calculating any
2 variable payment and the circumstances when payments may vary; and

3 (f) A statement of whether there are any costs or discounts associated with prepayment of
4 the commercial financing product, including a reference to the paragraph in the agreement that
5 creates the contractual rights of the parties related to prepayment. This disclosure shall be labeled
6 "Prepayment".

7 4. This section shall not apply to the following:

8 (1) A provider that is a depository institution or a subsidiary or service corporation that is:

9 (a) Owned and controlled by a depository institution; and

10 (b) Regulated by a federal banking agency;

11 (2) A provider that is a lender regulated under the federal Farm Credit Act, 12 U.S.C. Sec.
12 2001 et seq.;

13 (3) A commercial financing product that is:

14 (a) Secured by real property;

15 (b) A lease; or

16 (c) A purchase-money obligation that is incurred as all or part of the price of the collateral
17 or for value given to enable the business to acquire rights in or the use of the collateral if the value is
18 in fact so used;

19 (4) A commercial financing product in which the recipient is a motor vehicle dealer or an
20 affiliate of such a dealer, or a vehicle rental company, or an affiliate of such a company, pursuant to
21 a commercial loan or commercial open-end credit plan of at least fifty thousand dollars or a
22 commercial financing product offered by a person in connection with the sale or lease of products or
23 services that such person manufactures, licenses, or distributes, or whose parent company or any of
24 its directly or indirectly owned and controlled subsidiaries manufactures, licenses, or distributes;

25 (5) A commercial financing product that is a factoring transaction, purchase, sale, advance,
26 or similar of accounts receivables owed to a health care provider because of a patient's personal
27 injury treated by the health care provider;

28 (6) A provider who is licensed as a money transmitter in accordance with a license,
29 certificate, or charter issued by this state, or any other state, district, territory, or commonwealth of
30 the United States;

31 (7) A provider who consummates no more than five commercial financing products in this
32 state in a twelve-month period; or

33 (8) A transaction in which the provider has no obligation to advance more than five hundred
34 thousand dollars.

35 5. (1) No person shall engage in business as a broker for commercial financing within this
36 state, for compensation, unless prior to conducting such business, the person has filed a registration
37 with the division of finance within the department of commerce and insurance and has on file a
38 good and sufficient bond as specified in this subsection. The registration shall be effective upon

1 receipt by the division of finance of a completed registration form and the required registration fee,
2 and shall remain effective until the time of renewal.

3 (2) After filing an initial registration form, a broker shall file, on or before January thirty-
4 first of each year, a renewal registration form along with the required renewal registration fee.

5 (3) The broker shall pay a one-hundred-dollar registration fee upon the filing of an initial
6 registration and a fifty-dollar renewal fee upon the filing of a renewal registration.

7 (4) The registration form required by this subsection shall include:

8 (a) The name of the broker;

9 (b) The name in which the broker is transacted if different from that stated in paragraph (a)
10 of this subdivision;

11 (c) The address of the broker's principal office, which may be outside this state;

12 (d) Whether any officer, director, manager, operator, or principal of the broker has been
13 convicted of a felony involving an act of fraud, dishonesty, breach of trust, or money laundering;
14 and

15 (e) The name and address in this state of a designated agent upon whom service of process
16 may be made.

17 (5) If information in a registration form changes or otherwise becomes inaccurate after
18 filing, the broker shall not be required to file a further registration form prior to the time of renewal.

19 (6) Each broker shall obtain a surety bond issued by a surety company authorized to do
20 business in this state. The amount of the bond shall be ten thousand dollars. The bond shall be in
21 favor of the state of Missouri. Any person damaged by the broker's breach of contract or of any
22 obligation arising therefrom, or by any violation of this section, may bring an action against the
23 bond to recover damages suffered. The aggregate liability of the surety shall be only for actual
24 damages and in no event shall exceed the amount of the bond.

25 (7) Employees regularly employed by a broker who has complied with this subsection shall
26 not be required to file a registration or obtain a surety bond when acting within the scope of their
27 employment for the broker.

28 6. (1) Any person who violates any provision of this section shall be punished by a fine of
29 five hundred dollars per incident, not to exceed twenty thousand dollars for all aggregated violations
30 arising from the use of the transaction documentation or materials found to be in violation of this
31 section. Any person who violates any provision of this section after receiving written notice of a
32 prior violation from the attorney general shall be punished by a fine of one thousand dollars per
33 incident, not to exceed fifty thousand dollars for all aggregated violations arising from the use of the
34 transaction documentation or materials found to be in violation of this section.

35 (2) Violation of any provision of this section shall not affect the enforceability or validity of
36 the underlying agreement.

37 (3) This section shall not create a private right of action against any person or other entity
38 based upon compliance or noncompliance with its provisions.

1 (4) Authority to enforce compliance with this section is vested exclusively in the attorney
2 general of this state.

3 7. The requirements of subsections 3 and 5 of this section shall take effect upon the earlier
4 of:

5 (1) Six months after the division of finance finalizes promulgating rules, if the division
6 intends to promulgate rules; or

7 (2) February 28, 2024, if the division does not promulgate rules.

8 8. The division of finance may promulgate rules implementing this section. If the division
9 of finance intends to promulgate rules, it shall declare its intent to do so no later than February 28,
10 2024. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under
11 the authority delegated in this section shall become effective only if it complies with and is subject
12 to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter
13 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to chapter
14 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held
15 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after
16 August 28, 2023, shall be invalid and void."; and

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18 Further amend said bill by amending the title, enacting clause, and intersectional references
19 accordingly.