

FIRST REGULAR SESSION

HOUSE BILL NO. 584

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE OWEN.

1221H.02I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 427, RSMo, by adding thereto one new section relating to the disclosure of information pertaining to certain commercial financing products, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 427, RSMo, is amended by adding thereto one new section, to be known as section 427.300, to read as follows:

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

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

(1) "Account":

(a) Includes:

a. A right to payment of a monetary obligation, whether earned by performance, for one of the following:

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

(ii) Services rendered or to be rendered;

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

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

(v) Energy provided or to be provided;

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

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

20 b. Health care insurance receivables; and

21 (b) Shall not include:

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

23 b. Commercial tort claims;

24 c. Deposit accounts;

25 d. Investment property;

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

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

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

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

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

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

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

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

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

60 **(a) The provider reasonably contemplates repeat transactions; and**

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

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

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

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

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

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

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

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

89 **3. (1) A provider who consummates a commercial financing product shall**
90 **disclose the terms of the commercial financing product as required by this section. The**

91 disclosures shall be provided at or before consummation of the transaction. Only one
92 disclosure is required for each commercial financing product, and a disclosure is not
93 required as a result of the modification, forbearance, or change to a consummated
94 commercial financing product.

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

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

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

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

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

112 (e) The manner, frequency, and amount of each payment. This disclosure shall
113 be labeled "Payments". If the payments may vary, the provider shall instead disclose
114 the manner, frequency, and the estimated amount of the initial payment labeled
115 "Estimated Payments", and the commercial financing product agreement shall include
116 a description of the methodology for calculating any variable payment and the
117 circumstances when payments may vary; and

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

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

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

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

126 (b) Regulated by a federal banking agency;

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

129 **(3) A commercial financing product that is:**

130 **(a) Secured by real property;**

131 **(b) A lease; or**

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

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

142 **(5) A provider who is licensed as a money transmitter in accordance with a**
143 **license, certificate, or charter issued by this state, or any other state, district, territory,**
144 **or commonwealth of the United States; or**

145 **(6) A provider who consummates no more than five commercial financing**
146 **products in this state in a twelve-month period.**

147 **5. (1) No person shall engage in business as a commercial financing broker**
148 **within this state, for compensation, unless prior to conducting such business, the person**
149 **has filed a registration with the division of finance within the department of commerce**
150 **and insurance and has on file a good and sufficient bond as specified in this subsection.**
151 **The registration shall be effective upon receipt by the division of finance of a completed**
152 **registration form and the required registration fee, and shall remain effective until the**
153 **time of renewal.**

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

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

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

161 **(a) The name of the broker;**

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

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

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

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

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

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

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

183 6. (1) Any person who violates any provision of this section shall be punished by
184 a fine of five hundred dollars per incident, not to exceed twenty thousand dollars for all
185 aggregated violations arising from the use of the transaction documentation or materials
186 found to be in violation of this section. Any person who violates any provision of this
187 section after receiving written notice of a prior violation from the attorney general shall
188 be punished by a fine of one thousand dollars per incident, not to exceed fifty thousand
189 dollars for all aggregated violations arising from the use of the transaction
190 documentation or materials found to be in violation of this section.

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

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

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

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

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

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

202 **8. The division of finance may promulgate rules implementing this section. If**
203 **the division of finance intends to promulgate rules, it shall declare its intent to do so no**
204 **later than February 28, 2024. Any rule or portion of a rule, as that term is defined in**
205 **section 536.010, that is created under the authority delegated in this section shall**
206 **become effective only if it complies with and is subject to all of the provisions of chapter**
207 **536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable,**
208 **and if any of the powers vested with the general assembly pursuant to chapter 536 to**
209 **review, to delay the effective date, or to disapprove and annul a rule are subsequently**
210 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
211 **adopted after August 28, 2023, shall be invalid and void.**

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