

SECOND REGULAR SESSION

HOUSE BILL NO. 2063

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE OWEN.

4067H.011

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 transactions, 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, regardless of 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) does 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. The provider's
33 characterization of an accounts receivable purchase transaction as a purchase is
34 conclusive that the accounts receivable purchase transaction is not a loan or a
35 transaction for the use, forbearance, or detention of money;

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

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

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

53 (6) "Commercial financing facility", a provider's plan for purchasing multiple
54 accounts receivable from the recipient over a period of time pursuant to an agreement
55 that sets forth the terms and conditions governing the use of the facility;

56 (7) "Commercial financing transaction", any commercial loan, accounts
57 receivable purchase transaction, commercial open-end credit plan or each to the
58 extent the transaction is a business purpose transaction;

59 (8) "Commercial loan", a loan to a business, whether secured or unsecured;

60 (9) "Commercial open-end credit plan", commercial financing extended by any
61 provider under a plan in which:

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

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

66 (10) "Depository institution", any of the following:

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

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

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

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

81 (12) "Payment intangible", a general intangible under which the account
82 debtor's principal obligation is a monetary obligation;

83 (13) "Provider", a person who consummates more than five commercial
84 financing transactions to a business located in this state in any calendar year.
85 "Provider" also includes a person that enters into a written agreement with a depository
86 institution to arrange for the extension of a commercial financing transaction by the
87 depository institution to a business via an online lending platform administered by the
88 person. The fact that a provider extends a specific offer for a commercial financing

89 transaction on behalf of a depository institution shall not be construed to mean that the
90 provider engaged in lending or financing or originated that loan or financing.

91 3. (1) A provider that consummates a commercial financing transaction shall
92 disclose the terms of the commercial financing transaction as required by this section.
93 The disclosures shall be provided at or before consummation of the transaction. Only
94 one disclosure is required for each commercial financing transaction, and a disclosure is
95 not required as a result of the modification, forbearance, or change to a consummated
96 commercial financing transaction.

97 (2) A provider shall disclose the following in connection with each commercial
98 financing transaction:

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

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

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

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

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

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

124 (3) A provider that consummates a commercial financing facility may provide
125 disclosures of this subsection which are based on an example of a transaction that could

126 occur under the agreement. The example shall be based on an accounts receivable total
127 face amount owed of ten thousand dollars. Only one disclosure is required for each
128 commercial financing facility, and a disclosure is not required as result of a
129 modification, forbearance, or change to the facility. A new disclosure is not required
130 each time accounts receivable are purchased under the facility.

131 4. The provisions of this section shall not apply to the following:

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

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

135 (b) Regulated by a federal banking agency;

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

138 (3) A commercial financing transaction that is:

139 (a) Secured by real property;

140 (b) A lease; or

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

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

151 (5) A commercial financing transaction that is a factoring transaction, purchase,
152 sale, advance, or similar of accounts receivable owed to a health care provider because
153 of a patient's personal injury treated by the health care provider;

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

157 (7) A provider that consummates no more than five commercial financing
158 transactions in this state in a twelve-month period; or

159 (8) A commercial financing transaction of more than five hundred thousand
160 dollars.

161 5. (1) No person shall engage in business as a broker within this state for
162 compensation, unless prior to conducting such business, the person has filed a

163 registration with the division of finance within the department of commerce and
164 insurance and has on file a good and sufficient bond as specified in this subsection. The
165 registration shall be effective upon receipt by the division of finance of a completed
166 registration form and the required registration fee, and shall remain effective until the
167 time of renewal.

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

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

174 (4) The registration form required by this subsection shall include the following:

175 (a) The name of the broker;

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

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

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

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

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

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

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

197 6. (1) Any person who violates any provision of this section shall be punished by
198 a fine of five hundred dollars per incident, not to exceed twenty thousand dollars for all
199 aggregated violations arising from the use of the transaction documentation or materials

200 found to be in violation of this section. Any person who violates any provision of this
201 section after receiving written notice of a prior violation from the attorney general shall
202 be punished by a fine of one thousand dollars per incident, not to exceed fifty thousand
203 dollars for all aggregated violations arising from the use of the transaction
204 documentation or materials found to be in violation of this section.

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

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

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

211 7. The requirements of subsections 3 and 5 of this section shall take effect upon
212 either:

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

215 (2) February 28, 2025, if the division does not intend to promulgate rules.

216 8. The division of finance may promulgate rules implementing this section. If
217 the division of finance intends to promulgate rules, it shall declare its intent to do so no
218 later than February 28, 2025. Any rule or portion of a rule, as that term is defined in
219 section 536.010, that is created under the authority delegated in this section shall
220 become effective only if it complies with and is subject to all of the provisions of chapter
221 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable
222 and if any of the powers vested with the general assembly pursuant to chapter 536 to
223 review, to delay the effective date, or to disapprove and annul a rule are subsequently
224 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
225 adopted after August 28, 2024, shall be invalid and void.

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