

By Senator Brodeur

10-01051C-23

20231624\_\_

1                   A bill to be entitled  
2       An act relating to commercial financing product  
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.; providing  
7       definitions; creating s. 559.9612, F.S.; providing  
8       scope; creating s. 559.9613, F.S.; providing  
9       requirements for disclosure of certain information by  
10      commercial financing product providers under certain  
11      circumstances; creating s. 559.9614, F.S.; providing  
12      prohibited acts by commercial financing product  
13      providers; creating s. 559.9615, F.S.; providing  
14      exclusive authority of the Attorney General to enforce  
15      specified provisions; providing fines; providing  
16      construction; providing an effective date.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
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, 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

10-01051C-23

20231624\_\_

30 person all or a portion of the business' accounts, as defined in  
31 s. 679.1021, or payment intangibles, as defined in s. 679.1021,  
32 at a 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 product transaction.

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

49 (4) "Business" means an individual or group of individuals,  
50 a sole proprietorship, a corporation, a limited liability  
51 company, a trust, an estate, a cooperative, an association, or a  
52 limited or general partnership engaged in a business activity.

53 (5) "Commercial financing product" means a commercial loan,  
54 accounts receivable purchase transaction, commercial open-end  
55 credit plan, or each to the extent the transaction is a business  
56 purpose transaction. As used in this subsection, the term  
57 "business purpose transaction" means a transaction the proceeds  
58 of which are provided to a business or are intended to be used

10-01051C-23

20231624\_\_

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

66 (6) "Commercial loan" means a loan to a business, whether  
67 secured or unsecured.

68 (7) "Commercial open-end credit plan" means commercial  
69 financing extended by any provider under a plan in which:

70 (a) The provider reasonably contemplates repeat  
71 transactions.

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

76 (8) "Depository institution" means:

77 (a) A bank, a trust company, or an industrial loan company  
78 doing business under the authority of, or in accordance with, a  
79 license, certificate, or charter issued by the United States,  
80 this state, or any other state, district, territory, or  
81 commonwealth of the United States which is authorized to  
82 transact business in this state;

83 (b) A federally chartered savings and loan association,  
84 federal savings bank, or federal credit union that is authorized  
85 to transact business in the state; or

86 (c) A savings and loan association, savings bank, or credit  
87 union organized under the laws of this or any other state which

10-01051C-23

20231624\_\_

88 is authorized to transact business in the state.

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

101 559.9612 Scope of this part.—This part applies to any  
102 commercial financing product transaction consummated on or after  
103 January 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 product 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

10-01051C-23

20231624\_\_

117 if the value is in fact so used.

118 (4) A commercial financing product 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 product offered by a person in connection with the sale or lease  
124 of products or services that such person manufactures, licenses,  
125 or distributes, or whose parent company or any of its directly  
126 or indirectly owned and controlled subsidiaries manufactures,  
127 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 product transactions in the state in a 12-  
134 month period.

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

137 559.9613 Disclosures.-

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

10-01051C-23

20231624\_\_

146 (2) A provider must disclose the following information in  
147 connection with each commercial financing product transaction:

148 (a) The total amount of funds provided to the business  
149 under the terms of the agreement.

150 (b) The total amount of funds disbursed to the business if  
151 less than the amount specified in paragraph (a) as a result of  
152 any fees deducted or withheld at disbursement, any amount paid  
153 to the provider to satisfy a prior balance, and any amount paid  
154 to a third party on behalf of the business.

155 (c) The total amount to be paid to the provider under the  
156 terms of the agreement.

157 (d) The total dollar cost under the terms of the agreement,  
158 calculated by finding the difference between the amount  
159 specified in paragraph (a) and the amount specified in paragraph  
160 (c).

161 (e) The manner, frequency, and amount of each payment. If  
162 the payments may vary, the provider shall instead disclose the  
163 manner, frequency, and the estimated amount of the initial  
164 payment and a description of the methodology for calculating any  
165 variable payment and the circumstances when payments may vary.

166 (f) A statement of whether there are any costs or discounts  
167 associated with prepayment, including a reference to the  
168 paragraph in the agreement which creates the contractual rights  
169 of the parties related to prepayment.

170 559.9614 Prohibited acts.—A broker may not:

171 (1) Assess, collect, or solicit an advance fee from a  
172 business to provide services as a broker. However, this  
173 subsection does not preclude a broker from soliciting a business  
174 to pay for, or preclude a business from paying for, actual

10-01051C-23

20231624\_\_

175 services necessary to apply for a commercial financing product,  
176 including, but not limited to, a credit check or an appraisal of  
177 security, if such payment is made by check or money order  
178 payable to a party independent of the broker;

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

185 (3) Make or use any false or deceptive representation in  
186 its business dealings; or

187 (4) Offer the services of a broker by making, publishing,  
188 disseminating, circulating, or placing before the public within  
189 the state an advertisement in a newspaper or other publication  
190 or an advertisement in the form of a book, notice, handbill,  
191 poster, sign, billboard, bill, circular, pamphlet, letter,  
192 photograph, or motion picture or an advertisement circulated by  
193 radio, loudspeaker, telephone, television, telegraph, or in any  
194 other way, in which the offer or advertisement does not disclose  
195 the name, business address, and telephone number of the broker.  
196 For purposes of this subsection, the broker shall disclose the  
197 actual address and telephone number of the business of the  
198 broker in addition to the address and telephone number of any  
199 forwarding service that the broker may use.

200 559.9615 Enforcement.—

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

203 (a) Receive and act on complaints.

10-01051C-23

20231624\_\_

204       (b) Take action designed to obtain voluntary compliance  
205 with this part.

206       (c) Commence administrative or judicial proceedings to  
207 enforce compliance with this part.

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

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

219       (c) A violation of any provision of this part does not  
220 affect the enforceability or validity of the underlying  
221 commercial financing product transaction.

222       (3) Nothing in this part creates or is intended to create a  
223 private right of action against any person or entity based upon  
224 compliance or noncompliance with the provisions of this part.

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