

SECOND REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 963

101ST GENERAL ASSEMBLY

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4402S.03C

ADRIANE D. CROUSE, Secretary

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## 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.

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

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

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

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

**5 (1) "Accounts receivable purchase transaction", any  
6 transaction in which the business forwards or otherwise  
7 sells to the provider all or a portion of the business's  
8 accounts or payment intangibles at a discount to their  
9 expected value;**

**10 (2) "Broker", any person who, for compensation or the  
11 expectation of compensation, obtains a commercial financing  
12 product or an offer for a commercial financing product from  
13 a third party for a business located in this state;**

**14 (3) "Business", an individual or group of individuals,  
15 sole proprietorship, corporation, limited liability company,**

16 trust, estate, cooperative, association, or limited or  
17 general partnership engaged in a business activity;

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

28 (5) "Commercial financing product", any commercial  
29 loan, accounts receivable purchase transaction, commercial  
30 open-end credit plan or each to the extent the transaction  
31 is a business purpose transaction;

32 (6) "Commercial loan", a loan to a business, whether  
33 secured or unsecured;

34 (7) "Commercial open-end credit plan", commercial  
35 financing extended by any provider under a plan in which:

36 (a) The provider reasonably contemplates repeat  
37 transactions; and

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

42 (8) "Depository institution", any of the following:

43 (a) A bank, trust company, or industrial loan company  
44 doing business under the authority of, or in accordance  
45 with, a license, certificate, or charter issued by the  
46 United States, this state, or any other state, district,

47 territory, or commonwealth of the United States that is  
48 authorized to transact business in this state;

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

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

55 (9) "Provider", a person who consummates more than  
56 five commercial financing products to a business located in  
57 this state in any calendar year. "Provider" also includes a  
58 person that enters into a written agreement with a  
59 depository institution to arrange for the extension of a  
60 commercial financing product by the depository institution  
61 to a business via an online lending platform administered by  
62 the person. The fact that a provider extends a specific  
63 offer for a commercial financing product on behalf of a  
64 depository institution shall not be construed to mean that  
65 the provider engaged in lending or financing or originated  
66 that loan or financing.

67 3. (1) A provider that consummates a commercial  
68 financing product shall disclose the terms of the commercial  
69 financing product as required by this section. The  
70 disclosures shall be provided at or before consummation of  
71 the transaction and, in the case of a commercial open-end  
72 credit plan, the disclosures shall also be provided for any  
73 disbursement of funds after consummation within fifteen days  
74 following the last day of the month in which the  
75 disbursement of funds occurred under the commercial open-end  
76 credit plan.

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

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

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

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

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

99           (e) The manner, frequency, and amount of each  
100 payment. This disclosure shall be labeled "Payments". If  
101 the payments may vary, the provider shall instead disclose  
102 the manner, frequency, and the estimated amount of the  
103 initial payment labeled "Estimated Payments" and the  
104 commercial financing product agreement shall include a  
105 description of the methodology for calculating any variable  
106 payment and the circumstances when payments may vary;

107           (f) A statement of whether there are any costs or  
108 discounts associated with prepayment of the commercial  
109 financing product including a reference to the paragraph in  
110 the agreement that creates the contractual rights of the

111 parties related to prepayment. This disclosure shall be  
112 labeled "Prepayment"; and

113 (g) A statement of whether the provider will pay  
114 compensation directly to a broker in connection with the  
115 commercial financing product and the amount of compensation.

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

117 (1) A provider that is a depository institution;

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

120 (3) A commercial financing product secured by real  
121 property;

122 (4) A commercial financing product in which the  
123 recipient is a motor vehicle dealer or an affiliate of such  
124 a dealer, or a vehicle rental company, or an affiliate of  
125 such a company, pursuant to a commercial loan or commercial  
126 open-end credit plan of at least fifty thousand dollars or a  
127 commercial financing product offered by a person in  
128 connection with the sale of products or services that such  
129 person manufactures, licenses, or distributes, or whose  
130 parent company or any of its owned and controlled  
131 subsidiaries manufactures, licenses, or distributes;

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

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

141           (7) A provider that consummates no more than five  
142 commercial financing products in this state in a twelve-  
143 month period.

144           5. (1) Any person who violates any provision of this  
145 section shall be punished by a fine of five hundred dollars  
146 per incident, not to exceed twenty thousand dollars for all  
147 aggregated violations arising from the use of the  
148 transaction documentation or materials found to be in  
149 violation of this section. Any person who violates any  
150 provision of this section after receiving written notice of  
151 a prior violation from the attorney general shall be  
152 punished by a fine of one thousand dollars per incident, not  
153 to exceed fifty thousand dollars for all aggregated  
154 violations arising from the use of the transaction  
155 documentation or materials found to be in violation of this  
156 section.

157           (2) Violation of any provision of this section shall  
158 not affect the enforceability or validity of the underlying  
159 agreement.

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

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

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