

FIRST REGULAR SESSION

SENATE BILL NO. 187

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN (16).

0845S.01I

KRISTINA MARTIN, Secretary

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
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) "Account",

6 (a) Includes:

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

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

12 (ii) Services rendered or to be rendered;

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

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

15 (v) Energy provided or to be provided;

16 (vi) The use or hire of a vessel under a charter or
17 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

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

b. Health-care-insurance receivables.

(b) "Account" does not include:

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

b. Commercial tort claims;

c. Deposit accounts;

d. Investment property;

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

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

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

(3) "Broker", any person who, for compensation or the expectation of compensation, obtains a commercial financing product or an offer for a commercial financing product from a third party that would, if executed, be binding upon that third party and communicates that offer to a business

50 located in this state. The term "broker" does include a
51 "provider", or any individual or entity whose compensation
52 is not based or dependent upon on the terms of the specific
53 commercial financing product obtained or offered;

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

58 (5) "Business purpose transaction", any transaction
59 where the proceeds are provided to a business or are
60 intended to be used to carry on a business and not for
61 personal, family, or household purposes. For purposes of
62 determining whether a transaction is a business purpose
63 transaction, the provider may rely on any written statement
64 of intended purpose signed by the business. The statement
65 may be a separate statement or may be contained in an
66 application, agreement, or other document signed by the
67 business or the business owner or owners;

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

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

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

76 (a) The provider reasonably contemplates repeat
77 transactions; and

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

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

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

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

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

95 (10) "General Intangible", any personal property,
96 including things in action, other than accounts, chattel
97 paper, commercial tort claims, deposit accounts, documents,
98 goods, instruments, investment property, letter-of-credit
99 rights, letters of credit, money, and oil, gas, or other
100 minerals before extraction. "General Intangible" also
101 includes payment intangibles and software;

102 (11) "Payment Intangible", a general intangible under
103 which the account debtor's principal obligation is a
104 monetary obligation;

105 (12) "Provider", a person who consummates more than
106 five commercial financing products to a business located in
107 this state in any calendar year. "Provider" also includes a
108 person that enters into a written agreement with a
109 depository institution to arrange for the extension of a
110 commercial financing product by the depository institution
111 to a business via an online lending platform administered by
112 the person. The fact that a provider extends a specific
113 offer for a commercial financing product on behalf of a

depository institution shall not be construed to mean that the provider engaged in lending or financing or originated that loan or financing.

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

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

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

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

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

(d) The total dollar cost of the commercial financing product under the terms of the agreement, derived by subtracting the total amount of funds provided from the total of payments. This calculation shall include any fees or charges deducted by the provider from the "Total Amount

of Funds Provided". This disclosure shall be labeled "Total Dollar Cost of Financing";

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

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

4. This section shall not apply to the following:

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

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

(b) Regulated by a federal banking agency;

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

(3) A commercial financing product that is:

(a) Secured by real property;

(b) A lease; or

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

176 (4) A commercial financing product in which the
177 recipient is a motor vehicle dealer or an affiliate of such
178 a dealer, or a vehicle rental company, or an affiliate of
179 such a company, pursuant to a commercial loan or commercial
180 open-end credit plan of at least fifty thousand dollars or a
181 commercial financing product offered by a person in
182 connection with the sale of products or services that such
183 person manufactures, licenses, or distributes, or whose
184 parent company or any of its directly or indirectly owned
185 and controlled subsidiaries manufactures, licenses, or
186 distributes;

187 (5) A provider that is licensed as a money transmitter
188 in accordance with a license, certificate, or charter issued
189 by this state or any other state, district, territory, or
190 commonwealth of the United States; or

191 (6) A provider that consummates no more than five
192 commercial financing products in this state in a twelve-
193 month period.

194 5. (1) No person shall engage in business as a
195 commercial financing broker within this state for
196 compensation, unless prior to conducting such business, the
197 person has filed a registration with the division of finance
198 within the department of commerce and insurance and has on
199 file a good and sufficient bond as specified in this
200 subsection. The registration shall be effective upon
201 receipt by the division of finance of a completed
202 registration form and the required registration fee, and
203 shall remain effective until the time of renewal.

204 (2) After filing an initial registration form, a
205 broker shall file, on or before January 31 of each year, a
206 renewal registration form along with the required renewal
207 registration fee.

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

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

214 (a) The name of the broker;

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

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

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

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

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

230 (6) Every broker shall obtain a surety bond issued by
231 a surety company authorized to do business in this state.
232 The amount of the bond shall be ten thousand dollars. The
233 bond shall be in favor of the state of Missouri. Any person
234 damaged by the broker's breach of contract or of any
235 obligation arising therefrom, or by any violation of this
236 section, may bring an action against the bond to recover
237 damages suffered. The aggregate liability of the surety
238 shall be only for actual damages and in no event shall
239 exceed the amount of the bond.

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

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

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

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

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

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

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

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

272 8. The division of finance may promulgate rules
273 implementing this section. If the division of finance
274 intends to promulgate rules, it shall declare its intent to
275 do so no later than February 28, 2024. Any rule or portion
276 of a rule, as that term is defined in section 536.010, that
277 is created under the authority delegated in this section
278 shall become effective only if it complies with and is
279 subject to all of the provisions of chapter 536 and, if
280 applicable, section 536.028. This section and chapter 536
281 are nonseverable and if any of the powers vested with the
282 general assembly pursuant to chapter 536 to review, to delay
283 the effective date, or to disapprove and annul a rule are
284 subsequently held unconstitutional, then the grant of
285 rulemaking authority and any rule proposed or adopted after
286 August 28, 2023, shall be invalid and void.

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