

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 233

STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED JUNE 16, 2021

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator NELLIE POU

District 35 (Bergen and Passaic)

SYNOPSIS

Requires certain disclosures by providers of commercial financing.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Commerce Committee.



1 **AN ACT** concerning commercial financing and supplementing
2 P.L.1964, c.162 (C.17:9A-59.25 et seq.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in this act:

8 “Broker” means a person who, for or in expectation of
9 consideration:

10 (1) arranges or offers to arrange commercial financing for a
11 recipient; or

12 (2) assists or advises or offers to assist or advise a recipient in
13 obtaining or attempting to obtain a commercial financing.

14 Notwithstanding the above definition, “broker” does not include
15 a provider when referring a recipient to another provider.

16 “Closed-end financing” means a closed-end extension of credit,
17 secured or unsecured and including equipment financing, that does
18 not meet the definition of a lease as that term is defined in
19 N.J.S.12A:2A-103 and the proceeds of which the recipient does not
20 intend to use primarily for personal, family, or household purposes.
21 “Closed-end financing” includes financing with an established
22 principal amount and duration.

23 “Commercial financing” means open-end financing, closed-end
24 financing, sales-based financing, factoring transaction, or any other
25 form of financing, the proceeds of which the recipient does not
26 intend to use primarily for personal, family, or household purposes.

27 “Commissioner” means the Commissioner of Banking and
28 Insurance.

29 “Factoring transaction” means an accounts receivable purchase
30 transaction that includes an agreement to purchase, transfer, or sell
31 a legally enforceable claim for payment held by a recipient for
32 goods that the recipient has supplied or services that the recipient
33 has rendered that have been ordered but for which payment has not
34 yet been made.

35 “Finance charge” means the cost of financing as a dollar amount.
36 “Finance charge” includes any charge payable directly or indirectly
37 by the recipient and imposed directly or indirectly by the provider
38 as an incident to or a condition of the extension of financing. It
39 includes all charges that would be included under 12 C.F.R.
40 s.1026.4 as if the transaction were subject to 12 C.F.R. s.1026.4.
41 “Finance charge” also includes any charges as determined by the
42 commissioner. As it relates to an open-end financing, the finance
43 charge shall assume the maximum amount of credit available to the
44 recipient, in each case, is drawn and held for the duration of the
45 term or draw period. For the purposes of a factoring transaction, the
46 finance charge includes the discount taken on the face value of the
47 accounts receivable.

48 “Financial institution” means any of the following:

1 (1) a bank, trust company, or industrial loan company that is
2 doing business under the authority of, or in accordance with, a
3 license, certificate or charter issued by the United States, this State,
4 or any other state, district, territory, or commonwealth of the United
5 States;

6 (2) a federally chartered savings and loan association, federal
7 savings bank, federal credit union that is authorized to transact
8 business in this State, or any credit union service organization, as
9 defined in 12 C.F.R. s.704.11; or

10 (3) a savings and loan association, savings bank, or credit union
11 that is authorized to transact business in this State and that is
12 organized under the laws of this or any other state.

13 "Open-end financing" means an agreement for one or more
14 extensions of open-end credit, secured or unsecured, the proceeds of
15 which the recipient does not intend to use primarily for personal,
16 family, or household purposes. "Open-end financing" includes
17 credit extended by a provider under a plan in which:

18 (1) the provider reasonably contemplates repeated transactions;

19 (2) the provider may impose a finance charge from time to time
20 on an outstanding unpaid balance; and

21 (3) the amount of credit that may be extended to the recipient
22 during the term of the plan, up to any limit set by the provider, is
23 generally made available to the extent that any outstanding balance
24 is repaid.

25 "Person" means an individual, sole proprietor or other
26 unincorporated organization, association, joint venture, partnership,
27 limited partnership association, limited liability company,
28 corporation, trust, or joint stock company.

29 "Provider" means a person who extends a specific offer of
30 commercial financing to a recipient. Except as otherwise provided
31 in this act, "provider" also includes a person who solicits and
32 presents specific offers of commercial financing on behalf of a third
33 party.

34 "Recipient" means a person, or the authorized representative of a
35 person, who applies for commercial financing and is made a
36 specific offer of commercial financing by a provider. "Recipient"
37 shall not include a person acting as a broker.

38 "Sales-based financing" means a transaction that is repaid by the
39 recipient to the provider, over time and as a percentage of sales or
40 revenue, in which the payment amount may increase or decrease
41 according to the volume of sales made or revenue received by the
42 recipient. "Sales-based financing" includes a true-up mechanism
43 where the financing is repaid as a fixed payment but provides for a
44 reconciliation process that adjusts the payment to an amount that is
45 a percentage of sales or revenue.

46 "Specific offer" means the specific terms of commercial
47 financing, including price or amount, that is quoted to a recipient,
48 based on information obtained from, or about, the recipient which,

1 if accepted by a recipient, shall be binding on the provider, as
2 applicable, subject to any specific requirements stated in the terms.
3 Where a provider allows a recipient to choose from various offers,
4 “specific offer” shall mean the specific offer the recipient elects to
5 pursue.

6

7 2. A provider shall, at the time of extending a specific offer of
8 sales-based financing in a form and manner prescribed by the
9 commissioner, disclose to the recipient:

10 a. the total amount of the commercial financing, and the
11 disbursement amount, if different from the financing amount, after
12 any fees deducted or withheld at disbursement;

13 b. the finance charge;

14 c. the estimated annual percentage rate, using the words annual
15 percentage rate or the abbreviation "APR", expressed as a yearly
16 rate, inclusive of any fees and finance charges, and calculated in
17 accordance with section 1026.22 of Subpart C of Regulation Z (12
18 C.F.R. s.1026.22) of the federal “Truth in Lending Act” (15 U.S.C.
19 s.1601 et seq.) based on the estimated term of repayment and the
20 projected periodic payment amounts. The provider shall clearly
21 disclose the estimated annual percentage rate as an estimate, and
22 may include additional statements informing the recipient that the
23 actual annual percentage rate may vary depending on actual time to
24 repay. The estimated term of repayment and the projected periodic
25 payment amounts shall be calculated based on the projected sales
26 volume, which is the projection of the recipient's sales. The
27 projected sales volume may be calculated using the historical
28 method or the opt-in method. The provider shall provide notice to
29 the commissioner on which method the provider will use across all
30 instances of sales-based financing offered in calculating estimated
31 annual percentage rate pursuant to this section. In calculating the
32 projected sales volume:

33 (1) a provider using the historical method shall use an average
34 historical volume of sales or revenue by which the financing's
35 payment amounts are based and by which the estimated annual
36 percentage rate is calculated. The provider shall fix the historical
37 time period used to calculate the average historical volume and use
38 that period for all disclosure purposes for all sales-based financing
39 products offered. The fixed historical time period shall be either the
40 preceding time period from the specific offer or the average sales
41 for the same number of months with the highest sales volume
42 within the past twelve months. The fixed historical time period shall
43 be not less than one month and not more than twelve months; and

44 (2) a provider using the opt-in method shall determine the
45 estimated annual percentage rate, the estimated term, and the
46 projected payments, using a projected sales volume that the
47 provider elects for each disclosure. The provider using the opt-in
48 method shall participate in a review process to be determined by the

- 1 commissioner. A provider shall annually issue a report to the
2 commissioner, in a form and manner to be determined by the
3 commissioner, of estimated annual percentage rates disclosed to the
4 recipient and actual retrospective annual percentage rates of
5 completed transactions. The report shall contain information that
6 the commissioner determines necessary or appropriate to make a
7 determination of whether the deviation between the estimated
8 annual percentage rate and actual retrospective annual percentage
9 rates of completed transactions was reasonable. The commissioner
10 may, upon a finding that the use of projected sales volume by the
11 provider has resulted in an unacceptable deviation between
12 estimated and actual annual percentage rate, require the provider to
13 use the historical method. The commissioner may consider unusual
14 and extraordinary circumstances impacting the provider's deviation
15 between estimated and actual annual percentage rate in the
16 determination of such a finding;
- 17 d. the total repayment amount, which is the disbursement
18 amount plus the finance charge;
- 19 e. the estimated term, which is the period of time required for
20 the payments, based on the projected sales volume, to equal the
21 total amount required to be repaid;
- 22 f. the payment amounts, based on the projected sales volume.
23 The disclosure shall include, for payment amounts that are:
- 24 (1) fixed, the payment amounts and frequency and, if the
25 payment frequency is other than monthly, the amount of the average
26 projected payments per month; or
- 27 (2) variable, a payment schedule or a description of the method
28 used to calculate the amounts and frequency of payments, and the
29 amount of the average projected payments per month;
- 30 g. a description of all other potential fees and charges not
31 included in the finance charge, including, but not limited to, draw
32 fees, late payment fees, returned payment fees, and fees owed a
33 broker or other third party;
- 34 h. if the recipient were to elect to pay off or refinance the
35 commercial financing prior to full repayment:
- 36 (1) whether the recipient would be required to pay any finance
37 charges other than interest accrued since the recipient's last
38 payment and, if so, the percentage of any unpaid portion of the
39 finance charge and maximum dollar amount the recipient could be
40 required to pay; and
- 41 (2) whether the recipient would be required to pay any
42 additional fees not already included in the finance charge; and
- 43 i. a description of collateral requirements or security interests,
44 if any.
- 45
- 46 3. A provider shall, at the time of extending a specific offer of
47 closed-end financing, that is not otherwise considered sales-based

- 1 financing, in a form and manner prescribed by the commissioner,
2 disclose to the recipient:
- 3 a. the total amount of the commercial financing, and the
4 disbursement amount, if different from the financing amount, after
5 any fees deducted or withheld at disbursement;
- 6 b. the finance charge;
- 7 c. The annual percentage rate, using only the words “annual
8 percentage rate” or the abbreviation “APR”, expressed as a yearly
9 rate, inclusive of any fees and finance charges that cannot be
10 avoided by a recipient, and calculated in accordance with section
11 1026.22 of Subpart C of Regulation Z (12 C.F.R. s.1026.22) of the
12 federal “Truth in Lending Act” (15 U.S.C. s.1601 et seq.). In
13 calculating the annual percentage rate:
- 14 (1) the annual percentage rate shall be determined in accordance
15 with either the actuarial method or the United States Rule method.
16 Explanations, equations and instructions for determining the annual
17 percentage rate in accordance with the actuarial method are set forth
18 in appendix J to part 1026 of Subpart C of Regulation Z (12 C.F.R.
19 s.1026) of the federal “Truth in Lending Act” (15 U.S.C. s.1601 et
20 seq.). An error in disclosure of the annual percentage rate or finance
21 charge shall not, in itself, be considered a violation of this act if:
- 22 (a) the error resulted from a corresponding error in a calculation
23 tool used in good faith by the creditor; and
- 24 (b) upon discovery of the error, the creditor promptly
25 discontinues use of that calculation tool for disclosure purposes and
26 notifies the Department of Banking and Insurance in writing of the
27 error in the calculation tool;
- 28 (2) the annual percentage rate shall be considered accurate if it
29 is not more than 1/8 of 1 percentage point above or below the
30 annual percentage rate determined in accordance with paragraph (1)
31 of this subsection; and
- 32 (3) in an irregular transaction, the annual percentage rate shall
33 be considered accurate if it is not more than 1/4 of 1 percentage
34 point above or below the annual percentage rate determined in
35 accordance with paragraph (1) of this subsection. For purposes of
36 this paragraph, an irregular transaction is one that includes one or
37 more of the following features: multiple advances, irregular
38 payment periods, or irregular payment amounts, other than an
39 irregular first period or an irregular first or final payment;
- 40 d. the total repayment amount, which is the disbursement
41 amount plus the finance charge;
- 42 e. the term of the financing;
- 43 f. the payment amounts. The disclosure shall include, for
44 payment amounts that are:
- 45 (1) fixed, the payment amounts and frequency, and, if the term
46 is longer than one month, the average monthly payment amount; or
47 (2) variable, a full payment schedule or a description of the
48 method used to calculate the amounts and frequency of payments,

- 1 and, if the term is longer than one month, the estimated average
2 monthly payment amount;
- 3 g. a description of all other potential fees and charges that can
4 be avoided by the recipient, including, but not limited to, late
5 payment fees, returned payment fees, and fees owed brokers or
6 other third parties;
- 7 h. if the recipient were to elect to pay off or refinance the
8 commercial financing prior to full repayment:
- 9 (1) whether the recipient would be required to pay any finance
10 charges other than interest accrued since their last payment and, if
11 so, the percentage of any unpaid portion of the finance charge and
12 maximum dollar amount the recipient could be required to pay; and
- 13 (2) whether the recipient would be required to pay any
14 additional fees not already included in the finance charge; and
- 15 i. a description of collateral requirements or security interests,
16 if any.
- 17
- 18 4. A provider shall, at the time of extending a specific offer of
19 open-end financing in a form and manner prescribed by the
20 commissioner, disclose to the recipient:
- 21 a. the maximum amount of credit available to the recipient and
22 the amount scheduled to be drawn by the recipient at the time the
23 offer is extended, if any, less any fees deducted or withheld at
24 disbursement;
- 25 b. the finance charge;
- 26 c. the annual percentage rate, using only the words “annual
27 percentage rate” or the abbreviation “APR”, expressed as a nominal
28 yearly rate, inclusive of any fees and finance charges that cannot be
29 avoided by a recipient, and calculated in accordance with section
30 1026.22 of Subpart C of Regulation Z (12 C.F.R. s.1026.22) of the
31 federal “Truth in Lending Act” (15 U.S.C. s.1601 et seq.), and
32 based on the maximum amount of credit available to the recipient
33 and the term resulting from making the minimum required
34 payments term as disclosed. In calculating the annual percentage
35 rate:
- 36 (1) the annual percentage rate shall be determined in accordance
37 with either the actuarial method or the United States Rule method.
38 Explanations, equations and instructions for determining the annual
39 percentage rate in accordance with the actuarial method are set forth
40 in appendix J to part 1026 of Subpart C of Regulation Z (12 C.F.R.
41 s.1026) of the federal “Truth in Lending Act” (15 U.S.C. s.1601 et
42 seq.). An error in disclosure of the annual percentage rate or finance
43 charge shall not, in itself, be considered a violation of this act if:
- 44 (a) the error resulted from a corresponding error in a calculation
45 tool used in good faith by the creditor; and
- 46 (b) upon discovery of the error, the creditor promptly
47 discontinues use of that calculation tool for disclosure purposes and

- 1 notifies the Department of Banking and Insurance in writing of the
2 error in the calculation tool;
- 3 (2) the annual percentage rate shall be considered accurate if it
4 is not more than $\frac{1}{8}$ of 1 percentage point above or below the
5 annual percentage rate determined in accordance with paragraph (1)
6 of this subsection; and
- 7 (3) in an irregular transaction, the annual percentage rate shall
8 be considered accurate if it is not more than $\frac{1}{4}$ of 1 percentage
9 point above or below the annual percentage rate determined in
10 accordance with paragraph (1) of this subsection. For purposes of
11 this paragraph, an irregular transaction is one that includes one or
12 more of the following features: multiple advances, irregular
13 payment periods, or irregular payment amounts, other than an
14 irregular first period or an irregular first or final payment;
- 15 d. the total repayment amount, which is the draw amount, less
16 any fees deducted or withheld at disbursement, plus the finance
17 charge. The total repayment amount shall assume a draw amount
18 equal to the maximum amount of credit available to the recipient if
19 drawn and held for the duration of the term or draw period;
- 20 e. the term of the plan, if applicable, or the period over which a
21 draw is amortized;
- 22 f. the payment frequency and amounts, based on the
23 assumptions used in the calculation of the annual percentage rate,
24 including a description of payment amount requirements such as a
25 minimum payment amount, and if the payment frequency is other
26 than monthly, the amount of the average projected payments per
27 month. For payment amounts that are variable, the provider should
28 include a payment schedule, or a description of the method used to
29 calculate the amounts and frequency of payments, and the estimated
30 average monthly payment amount;
- 31 g. a description of all other potential fees and charges that can
32 be avoided by the recipient, including, but not limited to, draw fees,
33 late payment fees, returned payment fees, and fees owed brokers or
34 other third parties;
- 35 h. if the recipient were to elect to pay off or refinance the
36 commercial financing prior to full commercial financing prior to
37 full repayment:
- 38 (1) whether the recipient would be required to pay any finance
39 charges other than interest accrued since their last payment. If so,
40 disclosure of the percentage of any unpaid portion of the finance
41 charge and maximum dollar amount the recipient could be required
42 to pay; and
- 43 (2) whether the recipient would be required to pay any
44 additional fees not already included in the finance charge; and
- 45 i. a description of collateral requirements or security interests,
46 if any.

1 5. A provider shall, at the time of extending a specific offer for
2 a factoring transaction in a form and manner prescribed by the
3 commissioner, disclose to the recipient:

4 a. the amount of the receivables purchase price paid to the
5 recipient and, if different from the purchase price, the amount
6 disbursed to the recipient after any fees deducted or withheld at
7 disbursement;

8 b. the finance charge;

9 c. the estimated annual percentage rate, calculated pursuant to
10 Appendix J to part 1026 of Subpart C of Regulation Z (12 C.F.R.
11 s.1026) of the federal “Truth in Lending Act” (15 U.S.C. s.1601 et
12 seq.), as a single advance, single payment transaction. To calculate
13 the estimated annual percentage rate, the purchase amount is
14 considered the financing amount, the purchase amount minus the
15 finance charge is considered the payment amount, and the term is
16 established by the payment due date of the receivables.
17 Alternatively, the provider may estimate the term for a factoring
18 transaction as the average payment period, its historical data over a
19 period not to exceed the previous twelve months, concerning
20 payment invoices paid by the party owing the accounts receivable in
21 question. In calculating the annual percentage rate:

22 (1) the annual percentage rate shall be determined in accordance
23 with either the actuarial method or the United States Rule method.
24 Explanations, equations and instructions for determining the annual
25 percentage rate in accordance with the actuarial method are set forth
26 in appendix J to part 1026 of Subpart C of Regulation Z (12 C.F.R.
27 s.1026) of the federal “Truth in Lending Act” (15 U.S.C. s.1601 et
28 seq.). An error in disclosure of the annual percentage rate or finance
29 charge shall not, in itself, be considered a violation of this act if:

30 (a) the error resulted from a corresponding error in a calculation
31 tool used in good faith by the creditor; and

32 (b) upon discovery of the error, the creditor promptly
33 discontinues use of that calculation tool for disclosure purposes and
34 notifies the Department of Banking and Insurance in writing of the
35 error in the calculation tool;

36 (2) the annual percentage rate shall be considered accurate if it
37 is not more than 1/8 of 1 percentage point above or below the
38 annual percentage rate determined in accordance with paragraph (1)
39 of this subsection; and

40 (3) in an irregular transaction, the annual percentage rate shall
41 be considered accurate if it is not more than 1/4 of 1 percentage
42 point above or below the annual percentage rate determined in
43 accordance with paragraph (1) of this subsection. For purposes of
44 this paragraph, an irregular transaction is one that includes one or
45 more of the following features: multiple advances, irregular
46 payment periods, or irregular payment amounts, other than an
47 irregular first period or an irregular first or final payment;

1 d. the total payment amount, which is the purchase plus the
2 finance charge;

3 e. a description of all other potential fees and charges that can
4 be avoided by the recipient; and

5 f. a description of the receivables purchased and any additional
6 collateral requirements or security interests.

7
8 6. The commissioner may require, by regulation, certain
9 disclosures pursuant to this section of a provider extending a
10 specific offer of commercial financing that is not open-end
11 financing, closed-end financing, sales-based financing, or a
12 factoring transaction but otherwise meets the definition of
13 commercial financing pursuant to section 1 of this act.

14 If the commissioner requires disclosure pursuant to this section,
15 a provider shall, at the time of extending a specific offer of a form
16 of financing that is not open-end financing, closed-end financing,
17 sales-based financing, or a factoring transaction but otherwise
18 meets the definition of commercial financing pursuant to section 1
19 of this act and in a form and manner prescribed by the
20 commissioner, disclose to the recipient:

21 a. the total amount of the commercial financing, and the
22 disbursement amount, if different from the financing amount, after
23 any fees deducted or withheld at disbursement;

24 b. the finance charge;

25 c. the annual percentage rate, using only the words “annual
26 percentage rate” or the abbreviation “APR”, expressed as a yearly
27 rate, inclusive of any fees and finance charges, and calculated in
28 accordance with section 1026.22 of Subpart C of Regulation Z (12
29 C.F.R. s.1026.22) of the federal “Truth in Lending Act” (15 U.S.C.
30 s.1601 et seq.). In calculating the annual percentage rate:

31 (1) the annual percentage rate shall be determined in accordance
32 with either the actuarial method or the United States Rule method.
33 Explanations, equations and instructions for determining the annual
34 percentage rate in accordance with the actuarial method are set forth
35 in appendix J to part 1026 of Subpart C of Regulation Z (12 C.F.R.
36 s.1026) of the federal “Truth in Lending Act” (15 U.S.C. s.1601 et
37 seq.). An error in disclosure of the annual percentage rate or finance
38 charge shall not, in itself, be considered a violation of this act if:

39 (a) the error resulted from a corresponding error in a calculation
40 tool used in good faith by the creditor; and

41 (b) upon discovery of the error, the creditor promptly
42 discontinues use of that calculation tool for disclosure purposes and
43 notifies the Department of Banking and Insurance in writing of the
44 error in the calculation tool;

45 (2) the annual percentage rate shall be considered accurate if it
46 is not more than 1/8 of 1 percentage point above or below the
47 annual percentage rate determined in accordance with paragraph (1)
48 of this subsection; and

(3) in an irregular transaction, the annual percentage rate shall be considered accurate if it is not more than 1/4 of 1 percentage point above or below the annual percentage rate determined in accordance with paragraph (1) of this subsection. For purposes of this paragraph, an irregular transaction is one that includes one or more of the following features: multiple advances, irregular payment periods, or irregular payment amounts, other than an irregular first period or an irregular first or final payment;

d. the total repayment amount which is the disbursement amount plus the finance charge;

e. the term of the financing;

f. the payment amounts. The disclosure shall include, for payment amounts that are:

(1) fixed, the payment amounts and frequency, and the average monthly payment amount; or

(2) variable, a payment schedule or a description of the method used to calculate the amounts and frequency of payments, and the estimated average monthly payment amount;

g. a description of all other potential fees and charges that can be avoided by the recipient, including, but not limited to, late payment fees and returned payment fees;

h. if the recipient were to elect to pay off or refinance the commercial financing prior to full repayment:

(1) whether the recipient would be required to pay any finance charges other than interest accrued since their last payment. If so, disclosure of the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient could be required to pay; and

(2) whether the recipient would be required to pay any additional fees not already included in the finance charge; and

i. a description of collateral requirements or security interests, if any.

7. Notwithstanding any other law to the contrary, and in addition to other disclosures required pursuant to this act, a broker who charges any fees or commission that would be paid by the recipient of the financing shall provide, at the time of extending a specific offer for a commercial financing transaction in a form and manner prescribed by the commissioner, a written disclosure, in a document separate from the provider's contract with the recipient, stating the following, if the information is not contained within the disclosure offered by the provider directly to the recipient:

a. a list of all fees or commissions that would be paid to the broker by the recipient in connection with the commercial financing;

b. the total dollar amount of charges listed pursuant to subsection a. of this section; and

1 c. any increase to the annual percentage rate due to the charges
2 listed above and the resulting dollar cost.

3
4 8. If, as a condition of obtaining the commercial financing, the
5 provider requires the recipient to pay off the balance of an existing
6 commercial financing from the same provider, the provider shall
7 disclose:

8 a. the amount of the new commercial financing that is used to
9 pay off the portion of the existing commercial financing that
10 consists of prepayment charges required to be paid and any unpaid
11 interest expense that was not forgiven at the time of renewal. For
12 financing for which the total repayment amount is calculated as a
13 fixed amount, the prepayment charge is equal to the original finance
14 charge multiplied by the amount of the renewal used to pay off
15 existing financing as a percentage of the total repayment amount,
16 minus any portion of the total repayment amount forgiven by the
17 provider at the time of prepayment. If the amount is more than zero,
18 that amount shall be the answer to the following question: "Does
19 the renewal financing include any amount that is used to pay unpaid
20 finance charge or fees, also known as double dipping? Yes, {enter
21 amount}. If the amount is zero, the answer would be No."; and

22 b. if the disbursement amount will be reduced to pay down any
23 unpaid portion of the outstanding balance, the actual dollar amount
24 by which such disbursement amount will be reduced.

25
26 9. A provider shall obtain the recipient's written or electronic
27 signature on all disclosures required to be presented to the recipient
28 pursuant to this act before authorizing the recipient to proceed
29 further with the commercial financing transaction application. A
30 provider is not required to obtain the recipient's signature on any
31 disclosure for a commercial financing transaction that is not
32 consummated. When a provider provides multiple disclosures to a
33 recipient during the negotiation of a commercial financing
34 transaction that is ultimately consummated, the provider need only
35 obtain the recipient's signature on the final disclosure that
36 corresponds to the consummated transaction.

37
38 10. For the purposes of determining whether a financing is a
39 commercial financing, a provider may rely on any statement of
40 intended purposes by the recipient. The statement may be a separate
41 statement signed by the recipient; may be contained in the financing
42 application, financing agreement, or other document signed or
43 consented to by the recipient; or may be provided orally by the
44 recipient so long as it is documented in the recipient's application
45 file by the provider. Electronic signatures and consents are valid for
46 purposes of the foregoing sentence. The provider shall not be
47 required to ascertain that the proceeds of commercial financing are

1 used in accordance with the recipient's statement of intended
2 purposes.

3
4 11. Nothing in this act shall prevent a provider from disclosing
5 additional information on a commercial financing being offered to a
6 recipient but it shall not be a requirement pursuant to this act. The
7 information required to be disclosed pursuant to subsections a.
8 through i. of section 6 of this act shall appear in the disclosure
9 document before any additional information is disclosed by a
10 provider, and shall be in larger font and visually separated from the
11 additional disclosure information. If other metrics of financing cost
12 are disclosed or used in the application process of a commercial
13 financing, the metrics shall not be presented as a "rate" if they are
14 not the annual interest rate or the annual percentage rate. The term
15 "interest," when used to describe a percentage rate, shall only be
16 used to describe an annualized percentage rate, including, but not
17 limited to, the annual interest rate. When a provider states a rate of
18 finance charge or a financing amount to a recipient during an
19 application process for commercial financing, the provider shall
20 also state the rate as an "annual percentage rate," using that term or
21 the abbreviation "APR."

22
23 12. The commissioner shall promulgate regulations pursuant to
24 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
25 seq.):

26 a. concerning the calculation or determination of any metric
27 required to be disclosed to a recipient;

28 b. to develop and prescribe the form and manner in which a
29 provider shall make a disclosure pursuant to this act, which form
30 and manner shall allow recipients to easily compare financing
31 options, in a clear and conspicuous manner. The regulations shall
32 include the designation and method for disclosing the information
33 required in this act, or approving forms and methods already used
34 by providers; and

35 c. to define the terms used in this act and as may be necessary
36 and appropriate to interpret and implement the provisions of this
37 act.

38
39 13. a. A provider shall have no liability under this act for any
40 failure to comply with any requirement imposed by this act, if
41 within 60 days after discovering an error, and prior to the institution
42 of a civil action by a recipient or the receipt of written notice of the
43 error from the recipient, the provider notifies the recipient of the
44 error and makes whatever adjustments are necessary to assure that
45 the recipient will not be required to pay an amount in excess of the
46 charge actually disclosed, or the dollar equivalent of the annual
47 percentage rate actually disclosed, whichever is lower. A provider

1 shall reimburse the recipient in the event an amount was paid by the
2 recipient in excess of the charge actually owed.

3 b. A provider or financier shall have no liability for
4 inadvertently disclosing a finance charge, annual percentage rate,
5 periodic payment or irregular payment, average monthly cost,
6 maximum non-interest finance charge, or prepayment fee or charge
7 that exceeds the amount of information that the provider is required
8 to disclose under this act.

9
10 14. a. A provider or broker that violates any provision of this
11 act, as determined by the commissioner, shall be liable to a civil
12 penalty of not more than \$2,000 for each violation, or not more than
13 \$10,000 for each willful violation. The penalty shall be collected
14 by the commissioner in the name of the State in accordance with the
15 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
16 et seq.).

17 b. In addition to any penalty imposed pursuant to subsection a.
18 of this section, upon a finding by the commissioner that a provider
19 or broker has knowingly violated this act, the commissioner may
20 order additional relief, including, but not limited to, a permanent or
21 preliminary injunction on behalf of any recipient affected by the
22 violation.

23 c. A recipient or provider that is subject to any violation of this
24 act may bring an action against the provider or broker and recover a
25 civil penalty, as provided in subsection a. of this section, if the
26 court finds the provider or broker knowingly violated this act.

27
28 15. a. This act shall not apply to:

- 29 (1) a financial institution;
30 (2) a lender regulated under the federal "Farm Credit Act" (12
31 U.S.C. s.2001 et seq.);
32 (3) a commercial financing transaction secured by real property;
33 (4) a lease as defined in N.J.S.12A:2A-103;
34 (5) a person or provider who makes not more than five
35 commercial financing transactions in this State in a 12 month
36 period; or
37 (6) an individual commercial financing transaction in an amount
38 over \$500,000 dollars.

39 b. When a provider extends access to a specific offer of
40 commercial financing or provides disclosures for commercial
41 financing or lending, it shall not be construed to mean that the
42 provider engaged in lending, making, funding, or providing
43 commercial financing.

44
45 16. This act shall take effect on the 180th day next following
46 enactment, except a provider shall not be required to comply with
47 the requirements of this act until 120 days after final regulations are
48 adopted by the commissioner pursuant to this act.