

# STATE OF NEW YORK

979

2021-2022 Regular Sessions

## IN ASSEMBLY

January 6, 2021

Introduced by M. of A. ZEBROWSKI -- read once and referred to the Committee on Banks

AN ACT to amend the financial services law, in relation to exempting certain commercial financing transactions from certain disclosure requirements; and to amend a chapter of the laws of 2020 amending the financial services law relating to requiring certain providers that extend specific terms of commercial financing to a recipient to disclose certain information about the offer to the recipient, as proposed in legislative bills numbers S.5470-B and A.10118-A, in relation to the effectiveness thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Sections 802, 803, 804, 805, 806, 807 and 812 of the finan-  
2 cial services law, as added by a chapter of the laws of 2020 amending  
3 the financial services law relating to requiring certain providers that  
4 extend specific terms of commercial financing to a recipient to disclose  
5 certain information about the offer to the recipient, as proposed in  
6 legislative bills numbers S.5470-B and A.10118-A, are amended to read as  
7 follows:

8 § 802. Exemptions. This article shall not apply to, and shall not  
9 place any additional requirements or obligations upon, any of the  
10 following:

11 (a) a financial institution;

12 (b) a person acting in its capacity as a technology services provider,  
13 such as licensing software and providing support services, to an entity  
14 exempt under this section for use as part of the exempt entity's commer-  
15 cial financing program, provided such person has no interest, or  
16 arrangement or agreement to purchase any interest in the commercial  
17 financing extended by the exempt entity in connection with such program;

18 (c) a lender regulated under the federal Farm Credit Act (12 U.S.C.  
19 Sec. 2001 et seq.);

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 (d) a commercial financing transaction secured by real property;  
2 (e) a lease as defined in section 2-A-103 of the uniform commercial  
3 code;

4 (f) any person or provider who makes no more than five commercial  
5 financing transactions in this state in a twelve-month period; [~~or~~]

6 (g) an individual commercial financing transaction in an amount over  
7 two million five hundred thousand dollars[~~or~~]; or

8 (h) a commercial financing transaction in which the recipient is a  
9 dealer as defined in section four hundred fifteen of the vehicle and  
10 traffic law, or an affiliate of such a dealer, or a rental vehicle  
11 company as defined in section three hundred ninety-six-z of the general  
12 business law, or an affiliate of such a company pursuant to a commercial  
13 financing agreement or commercial open-end credit plan of at least fifty  
14 thousand dollars, including any commercial loan made pursuant to such a  
15 commercial financing transaction.

16 § 803. Sales-based financing disclosure requirements. A provider  
17 subject to this article shall provide the following disclosures to a  
18 recipient at the time of extending a specific offer of sales-based  
19 financing according to formatting prescribed by the superintendent:

20 (a) The total amount of the commercial financing, and the disbursement  
21 amount, if different from the financing amount, after any fees deducted  
22 or withheld at disbursement.

23 (b) The finance charge.

24 (c) The estimated annual percentage rate, using the words annual  
25 percentage rate or the abbreviation "APR", expressed as a yearly rate,  
26 inclusive of any fees and finance charges, and calculated in accordance  
27 with the federal Truth in Lending Act, Regulation Z, 12 C.F.R. §  
28 1026.22, based on the estimated term of repayment and the projected  
29 periodic payment amounts, regardless of whether such act or such regu-  
30 lation would require such a calculation. The estimated term of repayment  
31 and the projected periodic payment amounts shall be calculated based on  
32 the projection of the recipient's sales, called the projected sales  
33 volume. The projected sales volume may be calculated using the histor-  
34 ical method or the opt-in method. The provider shall provide notice to  
35 the superintendent on which method they intend to use across all  
36 instances of sales-based financing offered in calculating estimated  
37 annual percentage rate pursuant to this section.

38 (i) The provider using the historical method shall use an average  
39 historical volume of sales or revenue by which the financing's payment  
40 amounts are based and the estimated annual percentage rate is calcu-  
41 lated. The provider shall fix the historical time period used to calcu-  
42 late the average historical volume and use such period for all disclo-  
43 sure purposes for all sales-based financing products offered. The fixed  
44 historical time period shall either be the preceding time period from  
45 the specific offer or, alternatively, the provider may use average sales  
46 for the same number of months with the highest sales volume within the  
47 past twelve months. The fixed historical time period shall be no less  
48 than one month and not exceed twelve months.

49 (ii) The provider using the opt-in method shall determine the esti-  
50 mated annual percentage rate, the estimated term, and the projected  
51 payments, using a projected sales volume that the provider elects for  
52 each disclosure, provided, that they participate in a review process  
53 prescribed by the superintendent. A provider shall, on an annual basis,  
54 report data to the superintendent of estimated annual percentage rates  
55 disclosed to the recipient and actual retrospective annual percentage  
56 rates of completed transactions. The report shall contain such informa-

1 tion as the superintendent, by rule or regulation, may prescribe as  
2 necessary or appropriate for the purpose of making a determination of  
3 whether the deviation between the estimated annual percentage rate and  
4 actual retrospective annual percentage rates of completed transactions  
5 was reasonable. The superintendent shall establish the method of report-  
6 ing and may, upon a finding that the use of projected sales volume by  
7 the provider has resulted in an unacceptable deviation between estimated  
8 and actual annual percentage rate, require the provider to use the  
9 historical method. The superintendent may consider unusual and extraor-  
10 dinary circumstances impacting the provider's deviation between esti-  
11 mated and actual annual percentage rate in the determination of such  
12 finding.

13 (d) The total repayment amount, which is the disbursement amount plus  
14 the finance charge.

15 (e) The estimated term is the period of time required for the periodic  
16 payments, based on the projected sales volume, to equal the total amount  
17 required to be repaid.

18 (f) The payment amounts, based on the projected sales volume:

19 (i) for payment amounts that are fixed, the payment amounts and  
20 frequency (e.g., daily, weekly, monthly), and, if the payment frequency  
21 is other than monthly, the amount of the average projected payments per  
22 month; or

23 (ii) for payment amounts that are variable, a payment schedule or a  
24 description of the method used to calculate the amounts and frequency of  
25 payments, and the amount of the average projected payments per month.

26 (g) A description of all other potential fees and charges not included  
27 in the finance charge, including, but not limited to, draw fees, late  
28 payment fees, and returned payment fees.

29 (h) Were the recipient to elect to pay off or refinance the commercial  
30 financing prior to full repayment, the provider must disclose:

31 (i) whether the recipient would be required to pay any finance charges  
32 other than interest accrued since their last payment. If so, disclosure  
33 of the percentage of any unpaid portion of the finance charge and maxi-  
34 mum dollar amount the recipient could be required to pay; and

35 (ii) whether the recipient would be required to pay any additional  
36 fees not already included in the finance charge.

37 (i) A description of collateral requirements or security interests, if  
38 any.

39 § 804. Closed-end commercial financing disclosure requirements. A  
40 provider, subject to this article, shall provide the following disclo-  
41 sures to a recipient at the time of extending a specific offer for  
42 closed-end financing according to formatting prescribed by the super-  
43 intendent:

44 (a) The total amount of the commercial financing, and the disbursement  
45 amount, if different from the financing amount, after any fees deducted  
46 or withheld at disbursement.

47 (b) The finance charge.

48 (c) The annual percentage rate, using only the words annual percentage  
49 rate or the abbreviation "APR", expressed as a yearly rate, inclusive of  
50 any fees and finance charges that cannot be avoided by a recipient, and  
51 calculated in accordance with the federal Truth in Lending Act, Regu-  
52 lation Z, 12 C.F.R. § 1026.22, regardless of whether such act or such  
53 regulation would require such a calculation.

54 (d) The total repayment amount, which is the disbursement amount plus  
55 the finance charge.

56 (e) The term of the financing.

1 (f) The payment amounts:

2 (i) for payment amounts that are fixed, the payment amounts and  
3 frequency (e.g., daily, weekly, monthly), and, if the term is longer  
4 than one month, the average monthly payment amount; or

5 (ii) for payment amounts that are variable, a full payment schedule or  
6 a description of the method used to calculate the amounts and frequency  
7 of payments, and, if the term is longer than one month, the estimated  
8 average monthly payment amount.

9 (g) A description of all other potential fees and charges that can be  
10 avoided by the recipient, including, but not limited to, late payment  
11 fees and returned payment fees.

12 (h) Were the recipient to elect to pay off or refinance the commercial  
13 financing prior to full repayment, the provider must disclose:

14 (i) whether the recipient would be required to pay any finance charges  
15 other than interest accrued since their last payment. If so, disclosure  
16 of the percentage of any unpaid portion of the finance charge and maxi-  
17 mum dollar amount the recipient could be required to pay; and

18 (ii) whether the recipient would be required to pay any additional  
19 fees not already included in the finance charge.

20 (i) A description of collateral requirements or security interests, if  
21 any.

22 § 805. Open-end commercial financing disclosure requirements. A  
23 provider, subject to this article, shall provide the following disclo-  
24 sures to a recipient at the time of extending a specific offer for open-  
25 end financing according to formatting prescribed by the superintendent:

26 (a) The maximum amount of credit available to the recipient (e.g., the  
27 credit line amount), and the amount scheduled to be drawn by the recipi-  
28 ent at the time the offer is extended, if any, less any fees deducted or  
29 withheld at disbursement.

30 (b) The finance charge.

31 (c) The annual percentage rate, using only the words annual percentage  
32 rate or the abbreviation "APR", expressed as a nominal yearly rate,  
33 inclusive of any fees and finance charges that cannot be avoided by a  
34 recipient, and calculated in accordance with the federal Truth in Lend-  
35 ing Act, Regulation Z, 12 C.F.R. § 1026.22 and based on the maximum  
36 amount of credit available to the recipient and the term resulting from  
37 making the minimum required payments term as disclosed, regardless of  
38 whether such act or such regulation would require such a calculation.

39 (d) The total repayment amount, which is the draw amount, less any  
40 fees deducted or withheld at disbursement, plus the finance charge. The  
41 total repayment amount shall assume a draw amount equal to the maximum  
42 amount of credit available to the recipient if drawn and held for the  
43 duration of the term or draw period.

44 (e) The term of the plan, if applicable, or the period over which a  
45 draw is amortized.

46 (f) The payment frequency and amounts, based on the assumptions used  
47 in the calculation of the annual percentage rate, including a  
48 description of payment amount requirements such as a minimum payment  
49 amount, and if the payment frequency is other than monthly, the amount  
50 of the average projected payments per month. For payment amounts that  
51 are variable, the provider should include a payment schedule, or a  
52 description of the method used to calculate the amounts and frequency of  
53 payments, and the estimated average monthly payment amount.

54 (g) A description of all other potential fees and charges that can be  
55 avoided by the recipient, including, but not limited to, draw fees, late  
56 payment fees, and returned payment fees.

1 (h) Were the recipient to elect to pay off or refinance the commercial  
2 financing prior to full repayment, the provider must disclose:

3 (i) whether the recipient would be required to pay any finance charges  
4 other than interest accrued since their last payment. If so, disclosure  
5 of the percentage of any unpaid portion of the finance charge and maxi-  
6 mum dollar amount the recipient could be required to pay; and

7 (ii) whether the recipient would be required to pay any additional  
8 fees not already included in the finance charge.

9 (i) A description of collateral requirements or security interests, if  
10 any.

11 § 806. Factoring transaction disclosure requirements. A provider,  
12 subject to this article, shall provide the following disclosures to a  
13 recipient at the time of extending a specific offer for a factoring  
14 transaction according to formatting prescribed by the superintendent:

15 (a) The amount of the receivables purchase price paid to the recipient  
16 and, if different from the purchase price, the amount disbursed to the  
17 recipient after any fees deducted or withheld at disbursement.

18 (b) The finance charge.

19 (c) The estimated annual percentage rate, using that term, calculated  
20 according to the federal Truth in Lending Act, Regulation Z, 12 C.F.R. §  
21 1026 Appendix J, as a "single advance, single payment transaction",  
22 regardless of whether such act or such regulation would require such a  
23 calculation. To calculate the estimated annual percentage rate, the  
24 purchase amount is considered the financing amount, the purchase amount  
25 minus the finance charge is considered the payment amount, and the term  
26 is established by the payment due date of the receivables. As an alter-  
27 nate method of establishing the term, the provider may estimate the term  
28 for a factoring transaction as the average payment period, its histor-  
29 ical data over a period not to exceed the previous twelve months,  
30 concerning payment invoices paid by the party owing the accounts receiv-  
31 able in question.

32 (d) The total payment amount, which is the purchase amount plus the  
33 finance charge.

34 (e) A description of all other potential fees and charges that can be  
35 avoided by the recipient.

36 (f) A description of the receivables purchased and any additional  
37 collateral requirements or security interests.

38 § 807. Other forms of financing disclosure requirements. The super-  
39 intendent may require disclosure by a provider extending a specific  
40 offer of commercial financing which is not open-end financing, closed-  
41 end financing, sales-based financing, or factoring transaction but  
42 otherwise meets the definition of commercial financing as provided in  
43 this article. Subject to such rules and regulations by the superinten-  
44 dent, a provider subject to this article shall provide the following  
45 disclosures to a recipient at the time of extending a specific offer of  
46 other forms of financing according to formatting prescribed by the  
47 superintendent:

48 (a) The total amount of the commercial financing, and the disbursement  
49 amount, if different from the financing amount, after any fees deducted  
50 or withheld at disbursement.

51 (b) The finance charge.

52 (c) The annual percentage rate, using only the words annual percentage  
53 rate or the abbreviation "APR", expressed as a yearly rate, inclusive of  
54 any fees and finance charges, and calculated in accordance with the  
55 relevant sections of the federal Truth in Lending Act, Regulation Z or

1 this article, regardless of whether such act or such regulation would  
2 require such a calculation.

3 (d) The total repayment amount which is the disbursement amount plus  
4 the finance charge.

5 (e) The term of the financing.

6 (f) The payment amounts:

7 (i) for payment amounts that are fixed, the payment amounts and  
8 frequency (e.g., daily, weekly, monthly), and the average monthly  
9 payment amount; or

10 (ii) for payment amounts that are variable, a payment schedule or a  
11 description of the method used to calculate the amounts and frequency of  
12 payments, and the estimated average monthly payment amount.

13 (g) A description of all other potential fees and charges that can be  
14 avoided by the recipient, including, but not limited to, late payment  
15 fees and returned payment fees.

16 (h) Were the recipient to elect to pay off or refinance the commercial  
17 financing prior to full repayment, the provider must disclose:

18 (i) whether the recipient would be required to pay any finance charges  
19 other than interest accrued since their last payment. If so, disclosure  
20 of the percentage of any unpaid portion of the finance charge and maxi-  
21 mum dollar amount the recipient could be required to pay; and

22 (ii) whether the recipient would be required to pay any additional  
23 fees not already included in the finance charge.

24 (i) A description of collateral requirements or security interests, if  
25 any.

26 § 812. Penalties. (a) Upon a finding by the superintendent that a  
27 provider has violated the provisions of this article or the rules or  
28 regulations promulgated hereunder, the provider shall be ordered to pay  
29 to the people of this state a civil penalty for each violation of this  
30 article or any regulation or policy promulgated hereunder a sum not to  
31 exceed two thousand dollars for each violation or where such violation  
32 is willful ten thousand dollars for each violation.

33 (b) In addition to any penalty imposed pursuant to subdivision (a) of  
34 this section, upon a finding by the superintendent that a provider has  
35 knowingly violated this article, the superintendent may order additional  
36 relief, including, but not limited to, restitution or a permanent or  
37 preliminary injunction on behalf of any recipient affected by the  
38 violation.

39 § 2. Section 2 of a chapter of the laws of 2020, amending the finan-  
40 cial services law relating to requiring certain providers that extend  
41 specific terms of commercial financing to a recipient to disclose  
42 certain information about the offer to the recipient, as proposed in  
43 legislative bills numbers S.5470-B and A.10118-A, is amended to read as  
44 follows:

45 § 2. Nothing in this act shall authorize transactions in this state  
46 which are otherwise illegal or allow an entity or individual to operate  
47 in this state without a license where a license would otherwise be  
48 required.

49 § 3. This act shall take effect [~~on the one hundred eightieth day~~  
50 ~~after it shall have become a law] January 1, 2022. Effective immediate-~~  
51 ly, the addition, amendment and/or repeal of any rule or regulation,  
52 necessary for the implementation of this act on its effective date are  
53 authorized to be made and completed by the superintendent of financial  
54 services on or before such effective date.

55 § 3. This act shall take effect immediately; provided, however, that  
56 the amendments to sections 802, 803, 804, 805, 806, 807 and 812 of the

1 financial services law made by section 1 of this act shall take effect  
2 on the same date and in the same manner as a chapter of the laws of 2020  
3 amending the financial services law relating to requiring certain  
4 providers that extend specific terms of commercial financing to a recip-  
5 ient to disclose certain information about the offer to the recipient,  
6 as proposed in legislative bills numbers S.5470-B and A.10118-A.