

FIRST REGULAR SESSION

[PERFECTED]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 187

102ND GENERAL ASSEMBLY

0845S.02P

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;

18 (vii) Arising out of the use of a credit or charge
19 card or information contained on or for use with the card; or

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

24 b. Health-care-insurance receivables.

25 (b) "Account" does not include:

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

28 b. Commercial tort claims;

29 c. Deposit accounts;

30 d. Investment property;

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

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

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

45 (3) "Broker", any person who, for compensation or the
46 expectation of compensation, obtains a commercial financing
47 product or an offer for a commercial financing product from

48 a third party that would, if executed, be binding upon that
49 third party and communicates that offer to a business
50 located in this state. The term "broker" excludes 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
114 depository institution shall not be construed to mean that
115 the provider engaged in lending or financing or originated
116 that loan or financing.

117 3. (1) A provider that consummates a commercial
118 financing product shall disclose the terms of the commercial
119 financing product as required by this section. The
120 disclosures shall be provided at or before consummation of
121 the transaction. Only one disclosure is required for each
122 commercial financing product, and a disclosure is not
123 required as a result of the modification, forbearance, or
124 change to a consummated commercial financing product.

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

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

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

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

140 (d) The total dollar cost of the commercial financing
141 product under the terms of the agreement, derived by
142 subtracting the total amount of funds provided from the
143 total of payments. This calculation shall include any fees

144 or charges deducted by the provider from the "Total Amount
145 of Funds Provided". This disclosure shall be labeled "Total
146 Dollar Cost of Financing";

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

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

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

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

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

166 (b) Regulated by a federal banking agency;

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

169 (3) A commercial financing product that is:

170 (a) Secured by real property;

171 (b) A lease; or

172 (c) A purchase money obligation that is incurred as
173 all or part of the price of the collateral or for value
174 given to enable the business to acquire rights in or the use
175 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 or lease of products or services
183 that such person manufactures, licenses, or distributes, or
184 whose parent company or any of its directly or indirectly
185 owned and controlled subsidiaries manufactures, licenses,
186 or distributes;

187 (5) A commercial financing product that is a factoring
188 transaction, purchase, sale, advance, or similar of accounts
189 receivables owed to a health care provider because of a
190 patient's personal injury treated by the health care
191 provider;

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

196 (7) A provider that consummates no more than five
197 commercial financing products in this state in a twelve-
198 month period.

199 5. (1) No person shall engage in business as a
200 commercial financing broker within this state for
201 compensation, unless prior to conducting such business, the
202 person has filed a registration with the division of finance
203 within the department of commerce and insurance and has on
204 file a good and sufficient bond as specified in this
205 subsection. The registration shall be effective upon
206 receipt by the division of finance of a completed

207 registration form and the required registration fee, and
208 shall remain effective until the time of renewal.

209 (2) After filing an initial registration form, a
210 broker shall file, on or before January thirty-first of each
211 year, a renewal registration form along with the required
212 renewal registration fee.

213 (3) The broker shall pay a one-hundred-dollar
214 registration fee upon the filing of an initial registration
215 and a fifty-dollar renewal registration fee upon the filing
216 of a renewal registration.

217 (4) The registration form required by this subsection
218 shall include the following:

219 (a) The name of the broker;

220 (b) The name in which the broker is transacted if
221 different from that stated in paragraph (a) of this
222 subdivision;

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

225 (d) Whether any officer, director, manager, operator,
226 or principal of the broker has been convicted of a felony
227 involving an act of fraud, dishonesty, breach of trust, or
228 money laundering; and

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

231 (5) If information in a registration form changes or
232 otherwise becomes inaccurate after filing, the broker shall
233 not be required to file a further registration form prior to
234 the time of renewal.

235 (6) Every broker shall obtain a surety bond issued by
236 a surety company authorized to do business in this state.
237 The amount of the bond shall be ten thousand dollars. The
238 bond shall be in favor of the state of Missouri. Any person

239 damaged by the broker's breach of contract or of any
240 obligation arising therefrom, or by any violation of this
241 section, may bring an action against the bond to recover
242 damages suffered. The aggregate liability of the surety
243 shall be only for actual damages and in no event shall
244 exceed the amount of the bond.

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

249 6. (1) Any person who violates any provision of this
250 section shall be punished by a fine of five hundred dollars
251 per incident, not to exceed twenty thousand dollars for all
252 aggregated violations arising from the use of the
253 transaction documentation or materials found to be in
254 violation of this section. Any person who violates any
255 provision of this section after receiving written notice of
256 a prior violation from the attorney general shall be
257 punished by a fine of one thousand dollars per incident, not
258 to exceed fifty thousand dollars for all aggregated
259 violations arising from the use of the transaction
260 documentation or materials found to be in violation of this
261 section.

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

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

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

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

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

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

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

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