

[First Reprint]

SENATE SUBSTITUTE FOR
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STATE OF NEW JERSEY
218th LEGISLATURE

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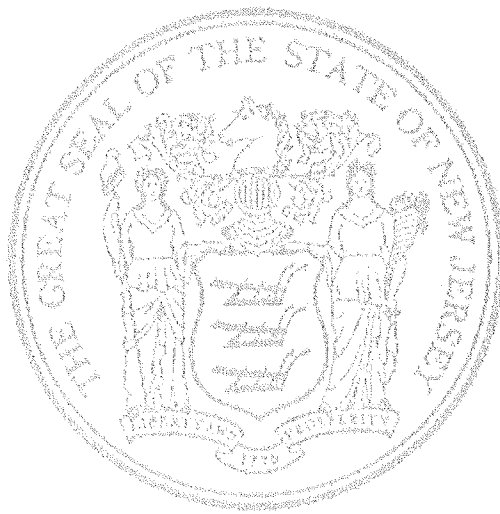
Sponsored by:
Senator TROY SINGLETON
District 7 (Burlington)

SYNOPSIS

Requires certain disclosures by providers of small business financing.

CURRENT VERSION OF TEXT

As amended by the Senate on December 17, 2018.



1 AN ACT concerning small business 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 “Asset-based transaction” means a transaction in which advances
9 are made from time to time contingent on a small business concern
10 forwarding payments received from one or more third parties for
11 goods the small business concern has supplied or services the small
12 business concern has rendered to that third party or parties.

13 ¹“Broker” means a person who, for or in expectation of
14 consideration:

15 (1) arranges or offers to arrange small business financing for a
16 small business concern; or

17 (2) assists or advises or offers to assist or advise a small
18 business concern in obtaining or attempting to obtain a small
19 business financing.

20 Notwithstanding the above definition, “broker” does not include
21 a provider when referring a small business concern to another
22 provider.¹

23 “Commissioner” means the Commissioner of Banking and
24 Insurance.

25 “Factoring” means an accounts receivable purchase transaction
26 that includes an ¹agreement to purchase future receivables or
27 receipts or an¹ agreement to purchase, transfer, or sell a legally
28 enforceable claim for payment held by a small business concern for
29 goods the small business concern has supplied or services the small
30 business concern has rendered that have been ordered but for which
31 payment has not yet been made.

32 “Provider” means a person who extends a specific offer of small
33 business financing to a small business concern located in this State.

34 “Provider” shall also include a non-depository institution, which
35 enters into a written agreement with a depository institution to
36 arrange for the extension of small business financing by the
37 depository institution to a small business concern via an online
38 lending platform administered by the non-depository institution.

39 “Small business financing” means a loan, line of credit, or a
40 factoring or asset-based transaction made for a business purpose
41 ¹[in the] with a¹ principal amount ¹or maximum credit limit¹ of
42 \$500,000 or less.

43
44 2. Notwithstanding any other law to the contrary, a provider

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted December 17, 2018.

1 that extends small business financing to a small business concern
2 located in this State shall, at the time the contract is offered, provide
3 the following disclosures to the small business concern, as
4 applicable:

5 a. (1) for a closed-end loan, the total dollar costs to be charged
6 to a borrower, assuming the borrower pays the loan according to its
7 original payment schedule, plus all required fees and charges that
8 cannot be avoided by the borrower, including any fees deducted or
9 amounts withheld at disbursement;

10 (2) for an open-end loan, the total dollar costs to be charged to a
11 borrower, plus all required periodic and non-periodic fees and
12 charges that cannot be avoided by a borrower. The total dollar
13 costs shall be disclosed for the amount scheduled to be drawn by
14 the borrower at the time of disclosure, as well as for the maximum
15 draw amount of credit available under the open-end loan; or

16 (3) for a factoring or asset-based transaction, the total dollar
17 costs to be charged to a small business concern, assuming the small
18 business concern delivers all purchased receivables to providers at
19 the time they are generated or at a mutually agreed upon time, plus
20 all required fees and charges that 'are paid by the small business
21 concern and that' cannot be avoided by the small business concern;

22 b. '(1) for a closed-end loan, the annual percentage rate,
23 expressed as a nominal yearly rate, inclusive of any fees and
24 finance charges;

25 (2) for an open-end loan, the estimated annual percentage rate.
26 In providing an estimated annual percentage rate, the rate shall be
27 calculated using the daily, weekly, or monthly payments from the
28 small business concern that are assumed by the provider in the
29 underwriting process. The disclosure shall state that the estimated
30 annual percentage rate is intended as a good faith estimate, and may
31 not be accurate if the business repays more quickly or slowly than
32 the estimated term; or

33 (3) for a factoring or asset-based transaction, the factor rate,
34 expressed as a decimal, and the factoring commission rate,
35 expressed as a percentage of sales or claims, including any
36 minimum or maximum payment amounts;

37 c. ' the finance charge, expressed as a dollar cost, which shall
38 mean the amount of any and all costs of small business financing,
39 including interest, transaction fees, origination fees, and any third
40 party fees that 'are paid by the small business concern and that'
41 cannot be avoided by the small business concern. The finance
42 charge shall assume the small business concern repays the small
43 business financing in its entirety according to the agreed upon
44 original payment schedule. For a factoring or asset-based
45 transaction, or small business financing that is fee-based, the
46 disclosure required pursuant to this subsection may be provided as
47 narrative explanation, formula, representative examples, or a
48 methodology;

1 '**[c.] d.**' (1) for a closed-end loan, the amount financed,
2 which shall mean the total loan amount less any prepaid finance
3 charges for the closed-end loan, including any fees deducted or
4 amounts withheld at disbursement;

5 (2) for an open-end loan, the borrowing limits, which shall mean
6 the maximum credit limit available to the small business concern,
7 and, if applicable, the amount scheduled to be drawn by the
8 borrower at the time of disclosure; or

9 (3) for a factoring or asset-based transaction, the amount
10 financed, which shall mean the advance amount less any prepaid
11 finance charges;

12 '**[d.] e.**' (1) for payment amounts that are fixed, the payment
13 schedule, which shall include the payment, amounts, and frequency
14 of payments scheduled to repay the obligation, which amounts shall
15 include principal, interest, and any other unavoidable finance
16 charges incurred after closing; or

17 (2) for payment amounts that are variable, a description of the
18 method used to calculate payment amounts and frequency of
19 payments;

20 '**[e.] f.**' if the 'contract with the provider requires the' small
21 business concern '**[will] to**' pay or be liable to pay a fee 'directly'
22 to any 'broker or other' third party with respect to the small
23 business financing, a description of that fee;

24 '**[f.] g.**' a description of the prepayment policies, including
25 any fees, expenses or charges due when the small business
26 financing is paid in full;

27 '**[g.] h.**' if not otherwise provided in writing to the small
28 business concern, notice that the '**[lender] provider**' has acquired
29 or will acquire a security interest in the collateral and a description
30 of the collateral; and

31 '**[h.] i.**' a description of any other fees or charges that can be
32 avoided by the small business concern, including, but not limited to,
33 draw fees, late payment fees, and returned payment fees.

34 'Nothing in this section shall prevent a provider from providing
35 additional disclosure information on financing being offered to a
36 small business concern.'

37

38 3. For purposes of determining whether financing is made for a
39 business purpose within the meaning of this act, a provider
40 extending financing shall obtain a written statement of intended
41 purposes signed by the small business concern. The statement may
42 be a separate statement signed by the small business concern or may
43 be contained in a '**[loan] financing**' application or other document
44 signed by the small business concern. The provider shall not be
45 required to determine whether the proceeds of the small business
46 financing are used in accordance with the statement of intended
47 purposes.

1 '4. Notwithstanding any other law to the contrary, a broker shall
2 provide a written disclosure to the small business concern and to the
3 provider stating the total dollar amount of fees charged to the small
4 business concern by the broker in connection with a small business
5 financing. The broker must provide this disclosure in a document
6 separate from the provider's contract with the small business
7 concern prior to the consummation of the small business financing
8 transaction.'

9
10 '[4.] 5.' The commissioner shall promulgate regulations
11 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
12 (C.52:14B-1 et seq.) to provide that, in addition to the disclosures
13 required to be provided to a small business concern pursuant to
14 section 2 of this act, a provider that extends small business
15 financing shall, as applicable and appropriate under the terms of the
16 small business financing, notify the small business concern before
17 any change that significantly affects '[the responsibilities or
18 obligations of the small business concern under the financing] any
19 of the disclosures required to be provided pursuant to section 2 of
20 this act'.

21
22 '[5.] 6.' a. A provider 'or broker' that violates any provision
23 of this act 'as determined by a court of competent jurisdiction.'
24 shall be liable to a civil penalty of not more than '[\$5,000 for a first
25 offense, or] \$10,000 '[for a second or any subsequent offense]
26 regardless of the number of small business concerns subject to that
27 violation'. 'If the court determines that a provider or broker
28 knowingly violated any provision of this act, the provider shall be
29 liable to a civil penalty of not more than \$10,000 for each small
30 business concern subject to the violation.' The penalty shall be
31 collected by the commissioner in the name of the State '[in a
32 summary proceeding]' in accordance with the "Penalty
33 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

34 b. In addition to any penalty imposed pursuant to subsection a.
35 of this section, upon a finding 'by a court of competent jurisdiction'
36 that a provider 'or broker' has violated this act, the
37 '[commissioner] court' may order additional relief, including, but
38 not limited to, a permanent or preliminary injunction or an order for
39 payment of restitution on behalf of any small business concern
40 injured by the provider 'or on behalf of any small business concern
41 or provider injured by a broker'.

42 c. Any small business concern 'or provider' which is subject to
43 any violation of this act may bring an action against the provider 'or
44 broker' and recover a civil penalty, as provided in subsection a. of
45 this section¹, if the court finds the provider or broker knowingly
46 violated this act'.

d. The remedies provided by this section shall not be exclusive, and may be pursued in addition to any other penalties provided by law.

'[6.] 7.' a. This act shall not apply to:

(1) an insured depository institution, which is defined pursuant to 12 U.S.C. '[1813(c)(2)] s.1813(c)(2)' to mean any bank or savings association the deposits of which are insured by the Federal Deposit Insurance Corporation '[I:]' or 'any institution-affiliated party, as defined pursuant to 12 U.S.C. s.1813(u);'

(2) 'an insured credit union, which is defined pursuant to 12 U.S.C. s.1752 to mean any credit union the deposits of which are insured by the National Credit Union Administration's National Credit Union Share Insurance Fund or any credit union service organization, as defined in 12 C.F.R. s.704.11; or

(3)' a commercial equipment lease or loan financing agreement entered into pursuant to chapter 2A or chapter 9 of Title 12A of the New Jersey Statutes.

b. The fact that a provider extends access to a specific offer of small business financing or lending on behalf of a depository institution shall not be construed to mean that the provider engaged in lending or originated that loan or financing.

'[7.] 8.' This act shall take effect on the 145th day next following the date of enactment, except the commissioner may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act.