[First Reprint]

SENATE SUBSTITUTE FOR
SENATE, No. 2262

STATE OF NEW JERSEY
218th LEGISLATURE

ADOPTED OCTOBER 29, 2018

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

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

1. As used in this act:
“Asset-based transaction” means a transaction in which advances
are made from time to time contingent on a small business concern
forwarding payments received from one or more third parties for
goods the small business concern has supplied or services the small
business concern has rendered to that third party or parties.

“Broker” means a person who, for or in expectation of
consideration:
(1) arranges or offers to arrange small business financing for a
small business concern; or
(2) assists or advises or offers to assist or advise a small
business concern in obtaining or attempting to obtain a small
business financing.

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

“Commissioner” means the Commissioner of Banking and
Insurance.

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

“Provider” means a person who extends a specific offer of small
business financing to a small business concern located in this State.
“Provider” shall also include a non-depository institution, which
enters into a written agreement with a depository institution to
arrange for the extension of small business financing by the
depository institution to a small business concern via an online
lending platform administered by the non-depository institution.

“Small business financing” means a loan, line of credit, or a
factoring or asset-based transaction made for a business purpose
[In the] with a principal amount [or maximum credit limit] of
$500,000 or less.

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

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

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

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

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

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

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

c. the finance charge, expressed as a dollar cost, which shall mean the amount of any and all costs of small business financing, including interest, transaction fees, origination fees, and any third party fees that are paid by the small business concern and that cannot be avoided by the small business concern. The finance charge shall assume the small business concern repays the small business financing in its entirety according to the agreed upon original payment schedule. For a factoring or asset-based transaction, or small business financing that is fee-based, the disclosure required pursuant to this subsection may be provided as a narrative explanation, formula, representative examples, or a methodology;
for a closed-end loan, the amount financed, which shall mean the total loan amount less any prepaid finance charges for the closed-end loan, including any fees deducted or amounts withheld at disbursement;

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

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

for payment amounts that are fixed, the payment schedule, which shall include the payment, amounts, and frequency of payments scheduled to repay the obligation, which amounts shall include principal, interest, and any other unavoidable finance charges incurred after closing; or

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

if the contract with the provider requires the small business concern to pay or be liable to pay a fee directly to any third party with respect to the small business financing, a description of that fee;

a description of the prepayment policies, including any fees, expenses or charges due when the small business financing is paid in full;

if not otherwise provided in writing to the small business concern, notice that the provider has acquired or will acquire a security interest in the collateral and a description of the collateral; and

a description of any other fees or charges that can be avoided by the small business concern, including, but not limited to, draw fees, late payment fees, and returned payment fees.

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

3. For purposes of determining whether financing is made for a business purpose within the meaning of this act, a provider extending financing shall obtain a written statement of intended purposes signed by the small business concern. The statement may be a separate statement signed by the small business concern or may be contained in a financing application or other document signed by the small business concern. The provider shall not be required to determine whether the proceeds of the small business financing are used in accordance with the statement of intended purposes.
4. Notwithstanding any other law to the contrary, a broker shall provide a written disclosure to the small business concern and to the provider stating the total dollar amount of fees charged to the small business concern by the broker in connection with a small business financing. The broker must provide this disclosure in a document separate from the provider's contract with the small business concern prior to the consummation of the small business financing transaction.

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

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

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

c. Any small business concern [or provider] which is subject to any violation of this act may bring an action against the provider [or broker] and recover a civil penalty, as provided in subsection a. of this section, if the court finds the provider or broker knowingly 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.

a. This act shall not apply to:

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

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.

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.