

**SENATE, No. 233**

**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**SYNOPSIS**

Requires certain disclosures by providers of small business financing.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



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 “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.

23 “Cash advance” means a financing option that allows a small  
24 business concern to sell all or a portion of its future sales  
25 collections or other future revenues in exchange for an immediate  
26 payment.

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

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

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

42 “Small business financing” means a loan, line of credit, or a  
43 factoring or asset-based transaction made for a business purpose  
44 with a principal amount or maximum credit limit of \$500,000 or  
45 less.

46

47 2. Notwithstanding any other law to the contrary, a provider  
48 that extends small business financing to a small business concern

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

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

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

15 (3) (a) for a factoring transaction, the purchase price expressed  
16 as a percentage of the amount of the purchased\_receivable, and all  
17 required fees and charges that are paid by the small business  
18 concern and that cannot be avoided by the small business concern;  
19 or

20 (b) for an asset-based transaction, the advanced rates, expressed  
21 as a percentage of the amount of the receivable or other asset  
22 supporting the transaction and all required fees and charges that are  
23 paid by the small business concern and that cannot be avoided by  
24 the small business concern; or

25 (4) for a cash advance, total dollar costs to be charged to a small  
26 business concern, assuming the small business concern delivers all  
27 purchased receivables to providers at the time they are generated or  
28 at a mutually agreed upon time, and all required fees and charges  
29 that are paid by the small business concern and that cannot be  
30 avoided by the small business concern;

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

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

42 (3) for a factoring or asset-based transaction, as applicable, the  
43 factor rate, expressed as a decimal, and the factoring commission  
44 rate, expressed as a percentage of sales or claims, including any  
45 minimum or maximum payment amounts or the interest rate index  
46 and spread applicable to the transaction; or

47 (4) (a) for a cash advance that calculates repayment costs  
48 dependent on the small business concern's future receivables, the

S233 SINGLETON

1 estimated annual percentage rate, provided as a range, with at least  
2 three different repayment times provided and a narrative  
3 explanation of how each rate was derived. Any estimated annual  
4 percentage rate provided pursuant to this subparagraph shall be  
5 calculated using a projected sales volume that is based on the small  
6 business concern's average historical sales, or the sales projections  
7 relied on by the provider in underwriting. Any estimated annual  
8 percentage rate provided pursuant to this paragraph shall be  
9 accompanied by a disclosure stating that the estimated annual  
10 percentage rate is intended as a good faith estimate, and may not be  
11 accurate if the business repays more quickly or slowly than the  
12 estimated term; or

13 (b) for a cash advance that calculates repayment costs as a fixed  
14 payment, the annual percentage rate, expressed as a nominal yearly  
15 rate, inclusive of any fees and finance charges;

16 c. the finance charge, expressed as a dollar cost, which shall  
17 mean the amount of any and all costs of small business financing,  
18 including interest, transaction fees, origination fees, and any third  
19 party fees that are paid by the small business concern and that  
20 cannot be avoided by the small business concern. The finance  
21 charge shall assume the small business concern repays the small  
22 business financing in its entirety according to the agreed upon  
23 original payment schedule. For a factoring or asset-based  
24 transaction, or small business financing that is fee-based, the  
25 disclosure required pursuant to this subsection may be provided as  
26 narrative explanation, formula, representative examples, or a  
27 methodology;

28 d. (1) for a closed-end loan, the amount financed, which shall  
29 mean the total loan amount less any prepaid finance charges for the  
30 closed-end loan, including any fees deducted or amounts withheld  
31 at disbursement;

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

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

39 e. (1) for payment amounts that are fixed, the payment  
40 schedule, which shall include the payment, amounts, and frequency  
41 of payments scheduled to repay the obligation, which amounts shall  
42 include principal, interest, and any other unavoidable finance  
43 charges incurred after closing; or

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

47 f. if the contract with the provider requires the small business  
48 concern to pay or be liable to pay a fee directly to any broker or

1 other third party with respect to the small business financing, a  
2 description of that fee;

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

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

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

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

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17 3. For purposes of determining whether financing is made for a  
18 business purpose within the meaning of this act, a provider  
19 extending financing shall obtain a written statement of intended  
20 purposes signed by the small business concern. The statement may  
21 be a separate statement signed by the small business concern or may  
22 be contained in a financing application or other document signed by  
23 the small business concern. The provider shall not be required to  
24 determine whether the proceeds of the small business financing are  
25 used in accordance with the statement of intended purposes.

26

27 4. Notwithstanding any other law to the contrary, a broker shall  
28 provide a written disclosure to the small business concern and to the  
29 provider stating the total dollar amount of fees charged to the small  
30 business concern by the broker in connection with a small business  
31 financing. The broker must provide this disclosure in a document  
32 separate from the provider's contract with the small business  
33 concern prior to the consummation of the small business financing  
34 transaction.

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

45

46 6. a. A provider or broker that violates any provision of this  
47 act, as determined by a court of competent jurisdiction, shall be  
48 liable to a civil penalty of not more than \$10,000 regardless of the

1 number of small business concerns subject to that violation. If the  
2 court determines that a provider or broker knowingly violated any  
3 provision of this act, the provider shall be liable to a civil penalty of  
4 not more than \$10,000 for each small business concern subject to  
5 the violation. The penalty shall be collected by the commissioner in  
6 the name of the State in accordance with the "Penalty Enforcement  
7 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

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

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

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

24  
25 7. a. This act shall not apply to:

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

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

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

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

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

STATEMENT

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This bill requires certain providers of small business financing to provide disclosures to small business concerns.

Under the bill, “provider” is defined to mean a person who extends a specific offer of small business financing to a small business concern located in this State. “Provider” also includes 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.

The bill requires providers that extend small business financing to a small business concern located in this State to provide, at the time the contract is offered, the following disclosures to the small business concern, as applicable:

(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;

(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;

(3) for a factoring transaction, the purchase price expressed as a percentage of the amount of the purchased receivable, plus all required fees and charges that cannot be avoided by the borrower;

(4) for an asset-based transaction, the advanced rates, expressed as a percentage as a percentage of the amount of the receivable or other asset supporting the transaction, plus all required fees and charges that cannot be avoided by the borrower;

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

(6) 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; and

(7) 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 or the interest rate index and spread applicable to the transaction.

The bill requires providers who offer cash advance to make the following disclosures:

1 (1) the total dollar costs to be charged to a small business  
2 concern, assuming the small business concern delivers all purchased  
3 receivables to providers at the time they are generated or at a  
4 mutually agreed upon time, and all required fees and charges that  
5 are paid by the small business concern and that cannot be avoided  
6 by the small business concern;

7 (2) the amount financed, which shall mean the advance amount  
8 less any prepaid finance charges; and

9 (3) for a cash advance that calculates repayment costs dependent  
10 on the small business concern's future receivables, the estimated  
11 annual percentage rate, provided as a range, with at least three  
12 different repayment times provided and a narrative explanation of  
13 how each rate was derived. Any estimated annual percentage rate is  
14 to be calculated using a projected sales volume that is based on the  
15 small business concern's average historical sales or the sales  
16 projections relied on by the provider in underwriting the cash  
17 advance; or

18 (4) for a cash advance that calculates repayment costs as a fixed  
19 payment, the annual percentage rate, expressed as a nominal yearly  
20 rate, inclusive of any fees and finance charges.

21 The bill requires the provider to disclose the finance charge,  
22 expressed as a dollar cost, which means the amount of any and all  
23 costs of small business financing, including interest, transaction  
24 fees, origination fees, and any third party fees that are paid by the  
25 small business concern and cannot be avoided by the small business  
26 concern. For a factoring or asset-based transaction, or small  
27 business financing that is fee-based, the disclosure may be provided  
28 as narrative explanation, formula, representative examples, or a  
29 methodology.

30 The bill requires providers to make the following disclosures  
31 concerning the amount financed by a small business concern:

32 (1) for a closed-end loan, the amount financed, including any  
33 fees deducted or amounts withheld at disbursement;

34 (2) for an open-end loan, the borrowing limits, and, if  
35 applicable, the amount scheduled to be drawn by the borrower at the  
36 time of disclosure; or

37 (3) for a factoring or asset-based transaction or a cash advance,  
38 the amount financed.

39 Providers are required to disclose, for payment amounts that are  
40 fixed, the payment schedule, or, for payment amounts that are  
41 variable, a description of the method used to calculate payment  
42 amounts and frequency of payments.

43 The bill also requires providers to make the following  
44 disclosures:

45 (1) if the contract with the provider requires the small business  
46 concern to pay or be liable to pay a fee directly to any broker or  
47 other third party with respect to the small business financing, a  
48 description of that fee;



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

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

8 (4) a description of any other fees or charges that can be avoided  
9 by the small business concern.

10 The bill requires providers extending financing to obtain a  
11 written statement of intended purposes signed by the small business  
12 concern for purposes of determining whether financing is made for  
13 a business purpose.

14 The bill requires that brokers who arrange or offer to arrange  
15 small business financing or assist or advise a small business  
16 concern in obtaining financing for consideration must provide a  
17 written disclosure to the small business concern and to the provider  
18 stating the total dollar amount of fees charged to the small business  
19 concern by the broker. The broker must provide this disclosure in a  
20 document separate from the provider's contract with the small  
21 business concern, prior to the consummation of the small business  
22 financing transaction.

23 Under the bill, the commissioner is required to promulgate  
24 regulations to provide that providers that extend small business  
25 financing must notify small business concerns before any change  
26 that significantly affects any of the disclosures required to be  
27 provided by the bill.

28 A provider or broker that violates any provision of the bill is  
29 liable to a civil penalty of not more than \$10,000 regardless of the  
30 number of small business concerns subject to that violation. If the  
31 court determines that a provider or broker knowingly violated any  
32 provision of the bill, the court may order additional relief. Any  
33 small business concern or provider which is subject to any violation  
34 of the bill may bring an action against the provider or broker and  
35 recover a civil penalty, if the court finds the provider or broker  
36 knowingly violated this act.

37 The bill does not apply to certain:

- 38 (1) insured depository institutions-affiliated parties;  
39 (2) insured credit unions; or  
40 (3) commercial equipment lease or loan financing agreements.