Sponsors 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.
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.
   “Cash advance” means a financing option that allows a small
   business concern to sell all or a portion of its future sales
   collections or other future revenues in exchange for an immediate
   payment.
   “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 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
   with a principal amount or maximum credit limit of $500,000 or
   less.

2. Notwithstanding any other law to the contrary, a provider
   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) (a) for a factoring transaction, the purchase price expressed as a percentage of the amount of the purchased receivable, and all required fees and charges that are paid by the small business concern and that cannot be avoided by the small business concern; or

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

   (4) for a cash advance, 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, and 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 that the estimated term;

   (3) for a factoring or asset-based transaction, as applicable, 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; or

   (4) (a) for a cash advance that calculates repayment costs dependent on the small business concern’s future receivables, the
estimated annual percentage rate, provided as a range, with at least three different repayment times provided and a narrative explanation of how each rate was derived. Any estimated annual percentage rate provided pursuant to this subparagraph shall be calculated using a projected sales volume that is based on the small business concern’s average historical sales, or the sales projections relied on by the provider in underwriting. Any estimated annual percentage rate provided pursuant to this paragraph shall be accompanied by a disclosure stating 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

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

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 narrative explanation, formula, representative examples, or a methodology;

d. (1) 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, or a cash advance, the amount financed, which shall mean the advance amount less any prepaid finance charges;

e. (1) 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;

f. if the contract with the provider requires the small business concern to pay or be liable to pay a fee directly to any broker or
other third party with respect to the small business financing, a
description of that fee;
g. a description of the prepayment policies, including any fees,
expenses or charges due when the small business financing is paid
in full;
h. 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
i. 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.

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 any of the disclosures required to be provided
pursuant to section 2 of this act.

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 $10,000 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 accordance with the "Penalty Enforcement

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 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.

7. 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 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.

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.
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) 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, and all required fees and charges that
are paid by the small business concern and that cannot be avoided
by the small business concern;
(2) the amount financed, which shall mean the advance amount
less any prepaid finance charges; and
(3) for a cash advance that calculates repayment costs dependent
on the small business concern’s future receivables, the estimated
annual percentage rate, provided as a range, with at least three
different repayment times provided and a narrative explanation of
how each rate was derived. Any estimated annual percentage rate is
to be calculated using a projected sales volume that is based on the
small business concern’s average historical sales or the sales
projections relied on by the provider in underwriting the cash
advance; or
(4) for a cash advance that calculates repayment costs as a fixed
payment, the annual percentage rate, expressed as a nominal yearly
rate, inclusive of any fees and finance charges.

The bill requires the provider to disclose the finance charge,
expressed as a dollar cost, which means 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 cannot be avoided by the small business
concern. For a factoring or asset-based transaction, or small
business financing that is fee-based, the disclosure may be provided
as narrative explanation, formula, representative examples, or a
methodology.

The bill requires providers to make the following disclosures
concerning the amount financed by a small business concern:
(1) for a closed-end loan, the amount financed, including any
fees deducted or amounts withheld at disbursement;
(2) for an open-end loan, the borrowing limits, 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 or a cash advance,
the amount financed.

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

The bill also requires providers to make the following
disclosures:
(1) if the contract with the provider requires the small business
concern to pay or be liable to pay a fee directly to any broker or
other third party with respect to the small business financing, a
description of that fee;
(2) a description of the prepayment policies, including any fees, expenses or charges due when the small business financing is paid in full;

(3) 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

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

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

The bill requires that brokers who arrange or offer to arrange small business financing or assist or advise a small business concern in obtaining financing for consideration must 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. 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.

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

A provider or broker that violates any provision of the bill is liable to a civil penalty of not more than $10,000 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 the bill, the court may order additional relief. Any small business concern or provider which is subject to any violation of the bill may bring an action against the provider or broker and recover a civil penalty, if the court finds the provider or broker knowingly violated this act.

The bill does not apply to certain:

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