

By: Senator(s) England

To: Business and Financial
Institutions

SENATE BILL NO. 2629

1 AN ACT TO CREATE THE COMMERCIAL FINANCING DISCLOSURE LAW;
2 TO ENACT DEFINITIONS; TO REQUIRE CERTAIN DISCLOSURES; TO PROVIDE
3 EXEMPTIONS; TO SPECIFY PENALTIES AND PROVIDE FOR ENFORCEMENT OF
4 THE ACT; TO DIRECT CODIFICATION; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
6 MISSISSIPPI:

7 **SECTION 1.** This act is known and may be cited as the
8 "Commercial Financing Disclosure Law."

9 **SECTION 2. Definitions.** (1) "Account" means:

10 (a) A right to payment of a monetary obligation,
11 whether or not earned by performance:

12 (i) For property that has been or is to be
13 sold, leased, licensed, assigned, or otherwise disposed of;

14 (ii) For services rendered or to be rendered;

15 (iii) For a policy of insurance issued or to
16 be issued;

17 (iv) For a secondary obligation incurred or to
18 be incurred;

19 (v) For energy provided or to be provided;



20 (vi) For the use or hire of a vessel under a
21 charter or other contract;

22 (vii) Arising out of the use of a credit or
23 charge card or information contained on or for use with the card;
24 or

25 (viii) As winnings in a lottery or other game
26 of chance operated or sponsored by a state, governmental unit of a
27 state, or person licensed or authorized to operate the game by a
28 state or governmental unit of a state.

29 (b) The term includes health care insurance
30 receivables.

31 (c) The term does not include:

32 (i) Rights to payment evidenced by chattel
33 paper or an instrument;

34 (ii) Commercial tort claims;

35 (iii) Deposit accounts;

36 (iv) Investment property;

37 (v) Letter-of-credit rights or letters of
38 credit; or

39 (vi) Rights to payment for money or funds
40 advanced or sold, other than rights arising out of the use of a
41 credit or charge card or information contained on or for use with
42 the card.

43 (2) "Accounts receivable purchase transaction" means any
44 transaction in which the business forwards or otherwise sells to



45 the provider all or a portion of the business's accounts or
46 payment intangibles at a discount to their expected value.

47 (3) "Business" means an individual or group of
48 individuals, sole proprietorship, corporation, limited liability
49 company, trust, estate, cooperative, association, or limited or
50 general partnership engaged in a business activity.

51 (4) "Business purpose transaction" means any transaction
52 where the proceeds are provided to a business or are intended to
53 be used to carry on a business and not for personal, family or
54 household purposes. For purposes of determining whether
55 transaction is a business purpose transaction, the provider may
56 rely on any written statement of intended purpose signed by the
57 business. The statement may be a separate statement or may be
58 contained in an application, agreement or other document signed by
59 the business or the business owner or owners.

60 (5) "Broker" means any person who, for compensation or the
61 expectation of compensation, obtains a Commercial Financing
62 Product or an offer for a commercial financing product from a
63 third party for a business located in this state.

64 (6) "Commercial financing product" means any commercial
65 loan, accounts receivable purchase transaction, commercial
66 open-end credit plan or each to the extent the transaction is a
67 business purpose transaction.

68 (7) "Commercial loan" means a loan to a business whether
69 secured or unsecured.



70 (8) "Commercial open-end credit plan" means commercial
71 financing extended by any provider under a plan in which:

72 (a) The provider reasonably contemplates repeat
73 transactions; and

74 (b) The amount of financing that may be extended to
75 the business during the term of the plan, up to any limit set by
76 the provider, is generally made available to the extent that any
77 outstanding balance is repaid.

78 (9) "Depository institution" means any of the following:

79 (a) A bank, trust company or industrial loan company
80 doing business under the authority of, or in accordance with, a
81 license, certificate or charter issued by the United States, this
82 state, or any other state, district, territory or commonwealth of
83 the United States that is authorized to transact business in this
84 state.

85 (b) A federally chartered savings and loan
86 association, federal savings bank, or federal credit union that is
87 authorized to transact business in this state.

88 (c) A savings and loan association, savings bank or
89 credit union organized under the laws of this or any other state
90 that is authorized to transact business in this state.

91 (10) "General Intangible" means any personal property,
92 including things in action other than accounts, chattel paper,
93 commercial tort claims, deposit accounts, documents, goods,
94 instruments, investment property, letter-of-credit rights, letters



95 of credit, money and oil, gas or other minerals before extraction.
96 The term includes payment intangibles and software.

97 (11) "Payment Intangible" means a general intangible under
98 which the account debtor's principal obligation is a monetary
99 obligation.

100 (12) "Provider" means a person who consummates more than
101 five (5) commercial financing products to a business located in
102 this state in any calendar year. "Provider" also includes a
103 person that enters into a written agreement with a depository
104 institution to arrange for the extension of a commercial financing
105 product by the depository institution to a business via an online
106 lending platform administered by the person. The fact that a
107 provider extends a specific offer for a commercial financing
108 product on behalf of a depository institution shall not be
109 construed to mean that the provider engaged in lending or
110 financing or originated that loan or financing.

111 **SECTION 3. Disclosures.** (1) A provider that consummates
112 a commercial financing product shall disclose the terms of the
113 commercial financing product as required by this act. The
114 disclosures must be provided at or before consummation of the
115 transaction and, in the case of a commercial open-end credit plan,
116 the disclosures must also be provided for any disbursement of
117 funds after consummation within fifteen (15) days following the
118 last day of the month in which the disbursement of funds occurred
119 under the commercial open-end credit plan.



120 (2) A provider must disclose the following in connection
121 with each commercial financing product:

122 (a) The total amount of funds provided to the
123 business under the terms of the commercial financing product.
124 This disclosure shall be labeled "total amount of funds provided."

125 (b) The total amount of funds disbursed to the
126 business under the terms of the commercial financing product, if
127 less than the total amount of funds provided, as a result of any
128 fees deducted or withheld at disbursement and any amount paid to a
129 third party on behalf of the business. This disclosure shall be
130 labeled "total amount of funds disbursed."

131 (c) The total amount to be paid to the provider
132 pursuant to the commercial financing product agreement. This
133 disclosure shall be labeled "total of payments."

134 (d) The total dollar cost of the commercial
135 financing product under the terms of the agreement, derived by
136 subtracting the total amount of funds provided from the total of
137 payments. This calculation shall include any fees or charges
138 deducted by the provider from the "total amount of funds
139 provided." This disclosure shall be labeled "total dollar cost of
140 financing."

141 (e) The manner, frequency and amount of each
142 payment. This disclosure shall be labeled "payments." If the
143 payments may vary, the provider shall instead disclose the manner,
144 frequency and the estimated amount of the initial payment labeled



145 "estimated payments" and the commercial financing product
146 agreement must include a description of the methodology for
147 calculating any variable payment and the circumstances when
148 payments may vary.

149 (f) A statement of whether there are any costs or
150 discounts associated with prepayment of the commercial financing
151 product including a reference to the paragraph in the agreement
152 that creates the contractual rights of the parties related to
153 prepayment. This disclosure shall be labeled "prepayment."

154 (g) A statement of whether the provider will pay
155 compensation directly to a broker in connection with the
156 commercial financing product and the amount of compensation.

157 **SECTION 4. Exemptions.** This act does not apply to any of
158 the following:

159 (a) A provider that is a depository institution.

160 (b) A provider that is a lender regulated under the
161 federal Farm Credit Act (12 USC Section 2001 et seq.).

162 (c) A commercial financing product secured by real
163 property.

164 (d) A commercial financing product in which the
165 recipient is a motor vehicle dealer or an affiliate of such a
166 dealer, or a vehicle rental company, or an affiliate of such a
167 company, pursuant to a commercial loan or commercial open-end
168 credit plan of at least Fifty Thousand Dollars (\$50,000.00).



169 (e) A provider that is licensed as a money
170 transmitter in accordance with a license, certificate, or charter
171 issued by this state, or any other state, district, territory, or
172 commonwealth of the United States.

173 (f) A provider that consummates no more than five
174 (5) commercial financing products in this state in a twelve-month
175 period.

176 **SECTION 5. Penalties.** (1) Any person who violates any
177 provision of this act shall be punishable by a fine of Five
178 Hundred Dollars (\$500.00) per incident, not to exceed Twenty
179 Thousand Dollars (\$20,000.00) for all aggregated violations
180 arising from the use of the transaction documentation or materials
181 found to be in violation of this act. Any person who violates any
182 provision of this act after receiving written notice of a prior
183 violation from the Attorney General of this state shall be
184 punishable by a fine of One Thousand Dollars (\$1,000.00) per
185 incident, not to exceed Fifty Thousand Dollars (\$50,000.00) for
186 all aggregated violations arising from the use of the transaction
187 documentation or materials found to be in violation of this act.

188 (2) Violation of any provision of this act will not affect
189 the enforceability or validity of the underlying agreement.

190 (3) Nothing in this act is intended to, or does, create a
191 private right of action against any person or other entity based
192 upon compliance or noncompliance with its provisions.



193 (4) Authority to enforce compliance with this act is
194 vested exclusively in the Attorney General of this state.

195 **SECTION 6.** The codifier is directed to codify this act as a
196 new Chapter 97 in Title 75, Regulation of Trade, Commerce and
197 Investments, Mississippi Code of 1972.

198 **SECTION 7.** This act shall take effect and be in force from
199 and after July 1, 2022.

