

By: Representative Ford (54th)

To: Banking and Financial
Services

HOUSE BILL NO. 1271

1 AN ACT TO CREATE THE "COMMERCIAL FINANCING DISCLOSURE LAW";
2 TO DEFINE CERTAIN TERMS RELATING TO COMMERCIAL FINANCING; TO
3 REQUIRE A PROVIDER THAT COMPLETES A COMMERCIAL FINANCING PRODUCT
4 TO DISCLOSE THE TERMS OF SUCH COMMERCIAL FINANCING PRODUCT; TO
5 PROVIDE CERTAIN EXCEPTIONS TO THE PROVISIONS OF THIS ACT; TO
6 PROHIBIT A PERSON FROM ENGAGING IN BUSINESS AS A COMMERCIAL
7 FINANCING BROKER WITHIN THIS STATE FOR COMPENSATION, UNLESS THE
8 PERSON HAS FILED A REGISTRATION WITH THE DEPARTMENT OF BANKING AND
9 CONSUMER FINANCE, AND HAS ON FILE A SUFFICIENT BOND; TO PROVIDE
10 PENALTIES FOR A VIOLATION OF THE PROVISIONS OF THIS ACT; AND FOR
11 RELATED PURPOSES.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

13 **SECTION 1.** This act shall be known and may be cited as the
14 "Commercial Financing Disclosure Law".

15 **SECTION 2.** As used in this act, the following words shall
16 have the meanings as defined in this section, unless the context
17 clearly requires otherwise:

18 (a) "Account" means a right to payment of a monetary
19 obligation, whether or not earned by performance, (i) for property
20 that has been or is to be sold, leased, licensed, assigned, or
21 otherwise disposed of, (ii) for services rendered or to be
22 rendered, (iii) for a policy of insurance issued or to be issued,



(iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term "account" includes health-care-insurance receivables. The term "account" does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on, or for use with, the card.

(b) "Accounts receivable purchase transaction" means any transaction in which the business forwards, or otherwise sells, to the provider all or a portion of the business's accounts or payment intangibles at a discount to their expected value. For purposes of state law, the provider's characterization of an accounts receivable purchase transaction as a purchase is conclusive that the accounts receivable purchase transaction is not a loan or a transaction for the use, forbearance, or detention of money.



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

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

61 (e) "Broker" means any person who, for compensation or
62 the expectation of compensation, obtains a commercial financing
63 product or an offer for a commercial financing product from a
64 third party that would, if executed, be binding upon that third
65 party, and communicates that offer to a business located in this
66 state. The term "broker" does not include a "provider," and any
67 individual or entity whose compensation is not based or dependent
68 upon on the terms of the specific commercial financing product
69 obtained or offered.

70 (f) "Commercial financing product" means any commercial
71 loan, accounts receivable purchase transaction, commercial



open-end credit plan, or each to the extent the transaction is a business purpose transaction.

(g) "Commercial loan" means a loan to a business whether secured or unsecured.

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

(i) The provider reasonably contemplates repeat transactions; and

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

(i) "Department" means the Department of Banking and Consumer Finance.

(j) "Depository institution" means any of the following:

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

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



97 (iii) A savings and loan association, savings
98 bank, or credit union organized under the laws of this or any
99 other state that is authorized to transact business in this state.

100 (k) "General intangible" means any personal property,
101 including things in action, other than accounts, chattel paper,
102 commercial tort claims, deposit accounts, documents, goods,
103 instruments, investment property, letter-of-credit rights, letters
104 of credit, money, and oil, gas, or other minerals before
105 extraction. The term "general intangible" includes payment
106 intangibles and software.

107 (l) "Payment intangible" means a general intangible
108 under which the account debtor's principal obligation is a
109 monetary obligation.

110 (m) "Provider" means a person who completes more than
111 five (5) commercial financing products to a business located in
112 this state in any calendar year. The term "provider" includes a
113 person that enters into a written agreement with a depository
114 institution to arrange for the extension of a commercial financing
115 product by the depository institution to a business, via an online
116 lending platform administered by the person. The fact that a
117 provider extends a specific offer for a commercial financing
118 product on behalf of a depository institution shall not be
119 construed to mean that the provider engaged in lending or
120 financing or originated that loan or financing.



SECTION 3.

(1) A provider that completes a commercial financing product shall disclose the terms of the commercial financing product as required by this act. The disclosures must be provided at or before completion of the transaction. Only one (1) disclosure must be provided for each commercial financing product, and a disclosure is not required as a result of the modification, forbearance or change to a completed commercial financing product.

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

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

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

(c) The total amount to be paid to the provider under the terms of the commercial financing product agreement. This disclosure shall be labeled "total of payments".



(d) The total dollar cost of the commercial financing product under the terms of the agreement, calculated by finding the difference between:

(i) The amount described in subsection (2)(a) of this section; and

(ii) The amount described in subsection (2)(c) of this section.

This disclosure shall be labeled "total dollar cost of financing".

(e) The manner, frequency and amount of each payment. This disclosure shall be labeled "payments". If the payments may vary, the provider shall instead disclose the manner, frequency and the estimated amount of the initial payment labeled "estimated payments" and the commercial financing product agreement must include a description of the methodology for calculating any variable payment and the circumstances when payments may vary.

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

SECTION 4. This act does not apply to any of the following:

(a) A provider that is a depository institution or a subsidiary or service corporation that is: (i) owned and



controlled by a depository institution; and, (ii) regulated by a federal banking agency.

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

(c) A commercial financing product that is: (i) secured by real property, (ii) a lease, or (iii) a purchase money obligation that is incurred as all or part of the price of the collateral or for value given to enable the business to acquire rights in or the use of the collateral if the value is in fact so used.

(d) A commercial financing product in which the recipient is a motor vehicle dealer or an affiliate of such a dealer, or a vehicle rental company, or an affiliate of such a company, pursuant to a commercial loan or commercial open-end credit plan of at least Fifty Thousand Dollars (\$50,000.00), or a commercial financing product offered by a person in connection with the sale or lease of products or services that such person manufactures, licenses, or distributes, or whose parent company or any of its directly or indirectly owned and controlled subsidiaries manufactures, licenses or distributes.

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



(f) A provider that completes no more than five (5) commercial financing products in this state in a period of twelve (12) months.

SECTION 5. (1) No person shall engage in business as a commercial financing broker within this state for compensation, unless prior to conducting such business, the person has filed a registration with the Department of Banking and Consumer Finance, and has on file a good and sufficient bond. The registration shall be effective upon receipt by the department, of a completed registration form and the required registration fee, and shall remain effective until the time of renewal.

(2) An application for registration shall include disclosure of whether any officer, director, manager, operator, or principal of the broker has been convicted of a felony involving an act of fraud, dishonesty, breach of trust, or money laundering.

(3) The department shall adopt such rules and regulations as it deems necessary to effect the purposes of this act. Before adopting any such rule or regulation, the department shall give reasonable notice of its content and shall afford interested parties an opportunity to be heard, in accordance with the rules and regulations of the department.

SECTION 6. (1) Any person who violates any provision of this act shall, upon conviction, be fined not less than Five Hundred Dollars (\$500.00) per violation, not to exceed Twenty Thousand Dollars (\$20,000.00) for all aggregated violations



arising from the use of the transaction documentation or materials found to be in violation of this act.

(2) Any person who violates any provision of this act after receiving written notice of a prior violation from the Attorney General shall, upon conviction, be fined not less than One Thousand Dollars (\$1,000.00) per violation, not to exceed Fifty Thousand Dollars (\$50,000.00) for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation of this act.

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

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

(5) Authority to enforce compliance with this act is vested exclusively in the Attorney General.

(6) The disclosure and registration requirements of this act will take effect six (6) months after the department finalizes implementing its rules and regulations, or upon the effective date of this act if the department has not implemented such rules and regulations.

SECTION 7. This act shall take effect and be in force from and after July 1, 2023.

