

By: Senator(s) Sparks

To: Business and Financial  
Institutions

SENATE BILL NO. 2619

1 AN ACT TO CREATE COMMERCIAL FINANCING DISCLOSURE LAWS TO  
2 ENSURE FULL DISCLOSURE OF CONTRACT TERMS; AND FOR RELATED  
3 PURPOSES.

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

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

7 **SECTION 2. Definitions.** As used in this section, the  
8 following words and phrases shall have the meanings ascribed in  
9 this section unless the context clearly indicates otherwise:

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

12 (i) For property that has been or is to be sold,  
13 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 be  
16 issued;

17 (iv) For a secondary obligation incurred or to be  
18 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 charge  
23 card or information contained on or for use with the card; or
- 24 (viii) As winnings in a lottery or other game of  
25 chance operated or sponsored by a state, governmental unit of a  
26 state, or person licensed or authorized to operate the game by a  
27 state or governmental unit of a state.

28 The term includes health-care-insurance receivables. The  
29 term does not include:

- 30 1. Rights to payment evidenced by chattel  
31 paper or an instrument;
- 32 2. Commercial tort claims;
- 33 3. Deposit accounts;
- 34 4. Investment property;
- 35 5. Letter-of-credit rights or letters of  
36 credit; or
- 37 6. Rights to payment for money or funds  
38 advanced or sold, other than rights arising out of the use of a  
39 credit or charge card or information contained on or for use with  
40 the card.

41 (b) "Accounts receivable purchase transaction" means  
42 any transaction in which the business forwards or otherwise sells  
43 to the provider all or a portion of the business's accounts or



44 payment intangibles at a discount to their expected value. For  
45 purposes of Mississippi law, the provider's characterization of an  
46 accounts receivable purchase transaction as a purchase is  
47 conclusive that the accounts receivable purchase transaction is  
48 not a loan or a transaction for the use, forbearance or detention  
49 of money.

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

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

63 (e) "Broker" means any person who, for compensation or  
64 the expectation of compensation, obtains a commercial financing  
65 product or an offer for a commercial financing product from a  
66 third party that would, if executed, be binding upon that third  
67 party and communicates that offer to a business located in this  
68 state. The term "broker" excludes a "provider," and any



69 individual or entity whose compensation is not based or dependent  
70 upon on the terms of the specific commercial financing product  
71 obtained or offered.

72 (f) "Commercial financing product" means any commercial  
73 loan, accounts receivable purchase transaction, commercial  
74 open-end credit plan or each to the extent the transaction is a  
75 business purpose transaction.

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

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

80 (i) The provider reasonably contemplates repeat  
81 transactions; and

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

86 (i) "Depository institution" means any of the  
87 following:

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



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

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

100 (j) "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 includes payment intangibles and software.

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

109 (l) "Provider" means a person who consummates more than  
110 five (5) commercial financing products to a business located in  
111 this state in any calendar year. "Provider" also includes a  
112 person that enters into a written agreement with a depository  
113 institution to arrange for the extension of a commercial financing  
114 product by the depository institution to a business via an online  
115 lending platform administered by the person. The fact that a  
116 provider extends a specific offer for a commercial financing  
117 product on behalf of a depository institution shall not be



118 construed to mean that the Provider engaged in lending or  
119 financing or originated that loan or financing.

120       **SECTION 3. Disclosures.** (1) A provider that consummates a  
121 commercial financing product shall disclose the terms of the  
122 commercial financing product as required by this act. The  
123 disclosures must be provided at or before consummation of the  
124 transaction. Only one (1) disclosure must be provided for each  
125 commercial financing product, and a disclosure is not required as  
126 a result of the modification, forbearance or change to a  
127 consummated commercial financing product.

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

130           (a) The total amount of funds provided to the business  
131 under the terms of the commercial financing product. This  
132 disclosure shall be labeled "Total Amount of Funds Provided."

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

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



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

146 (i) the amount described in paragraph (a) of this  
147 subsection; and

148 (ii) the amount described in paragraph 2(c) of  
149 this subsection.

150 This disclosure shall be labeled "Total Dollar Cost of  
151 Financing."

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

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

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

166 (a) A provider that is a depository institution or a  
167 subsidiary or service corporation that is:



168 (i) owned and controlled by a depository  
169 institution; and  
170 (ii) regulated by a federal banking agency.  
171 (b) A provider that is a lender regulated under the  
172 federal Farm Credit Act (12 USC Section 2001 et seq.).  
173 (c) A commercial financing product that is:  
174 (i) Secured by real property;  
175 (ii) A lease; or  
176 (iii) A purchase money obligation that is incurred  
177 as all or part of the price of the collateral or for value given  
178 to enable the business to acquire rights in or the use of the  
179 collateral if the value is in fact so used.  
180 (d) A commercial financing product in which the  
181 recipient is a motor vehicle dealer or an affiliate of such a  
182 dealer, or a vehicle rental company, or an affiliate of such a  
183 company, pursuant to a commercial loan or commercial open-end  
184 credit plan of at least Fifty Thousand Dollars (\$50,000.00) or a  
185 commercial financing product offered by a person in connection  
186 with the sale or lease of products or services that such person  
187 manufactures, licenses, or distributes or whose parent company or  
188 any of its directly or indirectly owned and controlled  
189 subsidiaries manufactures, licenses or distributes.  
190 (e) A provider that is licensed as a money transmitter  
191 in accordance with a license, certificate or charter issued by  
192 this state, or any other state, district, territory or





193 commonwealth of the United States. A provider is also a member of  
194 the Mississippi Manufacturers Association.

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

198 **SECTION 5. Broker Registration.** (1) No person shall engage  
199 in business as a commercial financing broker within this state,  
200 for compensation, unless prior to conducting such business, the  
201 person has filed a registration with the Mississippi Secretary of  
202 State and has on file a good and sufficient bond. The  
203 registration shall be effective upon receipt by the Mississippi  
204 Secretary of State of a completed registration form and the  
205 required registration fee, and shall remain effective until the  
206 time of renewal.

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

211 (3) The Mississippi Secretary of State shall adopt such  
212 regulations as it deems appropriate to effect the purposes of  
213 section. Before adopting any such regulation, the Secretary of  
214 State shall give reasonable notice of its content and shall afford  
215 interested parties an opportunity to be heard, in accordance with  
216 the rules of the Secretary of State.



217           **SECTION 6. Enforcement.** (1) Any person who violates any  
218 provision of this act shall be punishable by a fine of Five  
219 Hundred Dollars (\$500.00) per incident, not to exceed Twenty  
220 Thousand Dollars (\$20,000.00) for all aggregated violations  
221 arising from the use of the transaction documentation or materials  
222 found to be in violation of this act. Any person who violates any  
223 provision of this act after receiving written notice of a prior  
224 violation from the Attorney General of this state shall be  
225 punishable by a fine of One Thousand Dollars (\$1,000.00) per  
226 incident, not to exceed Fifty Thousand Dollars (\$50,000.00) for  
227 all aggregated violations arising from the use of the transaction  
228 documentation or materials found to be in violation of this act.

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

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

234           (4) Authority to enforce compliance with this act is vested  
235 exclusively in the attorney general of this state.

236           (5) The disclosure and registration requirements of this  
237 bill will take effect six (6) months after the regulator finalizes  
238 implementing regulations or the law becomes effective.

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

