

Legislative Bill Drafting Commission
07200-01-1

S. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

FINSERLA

(Exempts certain commercial financ-
ing transactions from certain
disclosure requirements)

Fin Serv. commercial financing

AN ACT

to amend the financial services law,
in relation to exempting certain
commercial financing transactions
from certain disclosure require-
ments; and to amend a chapter of the
laws of 2020 amending the financial
services law relating to requiring
certain providers that extend
specific terms of commercial financ-
ing to a recipient to disclose
certain information about the offer
to the recipient, as proposed in
legislative bills numbers S.5470-B

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal:

| | | | | |
|--------------|---------------|---------------|---------------|---------------|
| s15 Addabbo | s17 Felder | s07 Kaplan | s58 O'Mara | s10 Sanders |
| s52 Akshar | s59 Gallivan | s26 Kavanagh | s62 Ortt | s23 Savino |
| s36 Bailey | s05 Gaughran | s63 Kennedy | s01 Palumbo | s32 Sepulveda |
| s30 Benjamin | s12 Gianaris | s28 Krueger | s21 Parker | s41 Serino |
| s34 Biaggi | s22 Gounardes | s24 Lanza | s19 Persaud | s29 Serrano |
| s57 Borrello | s47 Griffo | s11 Liu | s13 Ramos | s39 Skoufis |
| s04 Boyle | s40 Harckham | s50 Mannion | s61 Rath | s16 Stavisky |
| s44 Breslin | s54 Helming | s42 Martucci | s38 Reichlin- | s45 Stec |
| s25 Brisport | s46 Hinchey | s02 Mattera | Melnick | s35 Stewart- |
| s08 Brooks | s27 Hoylman | s53 May | s48 Ritchie | Cousins |
| s55 Brouk | s31 Jackson | s37 Mayer | s33 Rivera | s49 Tedisco |
| s14 Comrie | s43 Jordan | s20 Myrie | s60 Ryan | s06 Thomas |
| s56 Cooney | s09 Kaminsky | s51 Oberacker | s18 Salazar | s03 Weik |

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

| | | | | |
|------------------|-------------------|------------------|--------------------|----------------|
| a049 Abbate | a045 Cymbrowitz | a100 Gunther | a015 Montesano | a090 Sayegh |
| a092 Abinanti | a018 Darling | a139 Hawley | a145 Morinello | a099 Schmitt |
| a031 Anderson | a053 Davila | a083 Heastie | a065 Niou | a076 Seawright |
| a122 Angelino | a072 De La Rosa | a028 Hevesi | a037 Nolan | a084 Septimo |
| a107 Ashby | a003 DeStefano | a128 Hunter | a144 Norris | a016 Sillitti |
| a035 Aubry | a070 Dickens | a029 Hyndman | a069 O'Donnell | a052 Simon |
| a120 Barclay | a054 Dilan | a079 Jackson | a091 Otis | a114 Simpson |
| a030 Barnwell | a081 Dinowitz | a104 Jacobson | a132 Palmesano | a005 Smith |
| a106 Barrett | a147 DiPietro | a011 Jean-Pierre | a088 Paulin | a118 Smullen |
| a060 Barron | a009 Durso | a134 Jensen | a141 Peoples- | a022 Solages |
| a082 Benedetto | a048 Eichenstein | a115 Jones | Stokes | a057 Souffrant |
| a042 Bichotte | a004 Englebright | a077 Joyner | a058 Perry | Forrest |
| a117 Blankenbush | a074 Epstein | a125 Kelles | a023 Pheffer | a110 Steck |
| a098 Brabenec | a109 Fahy | a040 Kim | Amato | a010 Stern |
| a026 Braunstein | a061 Fall | a105 Lalor | a086 Pichardo | a127 Stirpe |
| a138 Bronson | a080 Fernandez | a013 Lavine | a089 Pretlow | a102 Tague |
| a012 Brown | a008 Fitzpatrick | a097 Lawler | a073 Quart | a064 Tannousis |
| a093 Burdick | a124 Friend | a126 Lemondes | a019 Ra | a071 Taylor |
| a085 Burgos | a046 Frontus | a135 Lunsford | a038 Rajkumar | a001 Thiele |
| a142 Burke | a095 Galef | a123 Lupardo | a006 Ramos | a033 Vanel |
| a119 Buttenschon | a050 Gallagher | a129 Magnarelli | a062 Reilly | a116 Walczyk |
| a094 Byrne | a131 Gallahan | a036 Mamdani | a087 Reyes | a055 Walker |
| a133 Byrnes | a007 Gandolfo | a130 Manktelow | a043 Richardson | a143 Wallace |
| a103 Cahill | a002 Giglio, J.A. | a108 McDonald | a078 Rivera, J. | a112 Walsh |
| a044 Carroll | a148 Giglio, J.M. | a014 McDonough | a149 Rivera, J.D. | a041 Weinstein |
| a136 Clark | a066 Glick | a146 McMahan | a068 Rodriguez | a024 Weprin |
| a047 Colton | a034 Gonzalez- | a137 Meeks | a027 Rosenthal, D. | a059 Williams |
| a140 Conrad | Rojas | a017 Mikulin | a067 Rosenthal, L. | a113 Woerner |
| a032 Cook | a150 Goodell | a101 Miller, B. | a025 Rozic | a096 Zebrowski |
| a039 Cruz | a075 Gottfried | a020 Miller, M. | a121 Salka | a056 Zinerman |
| a063 Cusick | a021 Griffin | a051 Mitaynes | a111 Santabarbara | |

1) Single House Bill (introduced and printed separately in either or
both houses). Uni-Bill (introduced simultaneously in both houses and printed
as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2
signed copies of bill and: in Assembly 2 copies of memorandum in support, in
Senate 4 copies of memorandum in support (single house); or 4 signed copies
of bill and 6 copies of memorandum in support (uni-bill).

and A.10118-A, in relation to the effectiveness thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Sections 802, 803, 804, 805, 806, 807 and 812 of the finan-
2 cial services law, as added by a chapter of the laws of 2020 amending
3 the financial services law relating to requiring certain providers that
4 extend specific terms of commercial financing to a recipient to disclose
5 certain information about the offer to the recipient, as proposed in
6 legislative bills numbers S.5470-B and A.10118-A, are amended to read as
7 follows:

8 § 802. Exemptions. This article shall not apply to, and shall not
9 place any additional requirements or obligations upon, any of the
10 following:

11 (a) a financial institution;

12 (b) a person acting in its capacity as a technology services provider,
13 such as licensing software and providing support services, to an entity
14 exempt under this section for use as part of the exempt entity's commer-
15 cial financing program, provided such person has no interest, or
16 arrangement or agreement to purchase any interest in the commercial
17 financing extended by the exempt entity in connection with such program;

18 (c) a lender regulated under the federal Farm Credit Act (12 U.S.C.
19 Sec. 2001 et seq.);

20 (d) a commercial financing transaction secured by real property;

21 (e) a lease as defined in section 2-A-103 of the uniform commercial
22 code;

23 (f) any person or provider who makes no more than five commercial
24 financing transactions in this state in a twelve-month period; [or]

25 (g) an individual commercial financing transaction in an amount over
26 two million five hundred thousand dollars[.]; or

27 (h) a commercial financing transaction in which the recipient is a
28 dealer as defined in section four hundred fifteen of the vehicle and

1 traffic law, or an affiliate of such a dealer, or a rental vehicle
2 company as defined in section three hundred ninety-six-z of the general
3 business law, or an affiliate of such a company pursuant to a commercial
4 financing agreement or commercial open-end credit plan of at least fifty
5 thousand dollars, including any commercial loan made pursuant to such a
6 commercial financing transaction.

7 § 803. Sales-based financing disclosure requirements. A provider
8 subject to this article shall provide the following disclosures to a
9 recipient at the time of extending a specific offer of sales-based
10 financing according to formatting prescribed by the superintendent:

11 (a) The total amount of the commercial financing, and the disbursement
12 amount, if different from the financing amount, after any fees deducted
13 or withheld at disbursement.

14 (b) The finance charge.

15 (c) The estimated annual percentage rate, using the words annual
16 percentage rate or the abbreviation "APR", expressed as a yearly rate,
17 inclusive of any fees and finance charges, and calculated in accordance
18 with the federal Truth in Lending Act, Regulation Z, 12 C.F.R. §
19 1026.22, based on the estimated term of repayment and the projected
20 periodic payment amounts, regardless of whether such act or such regu-
21 lation would require such a calculation. The estimated term of repayment
22 and the projected periodic payment amounts shall be calculated based on
23 the projection of the recipient's sales, called the projected sales
24 volume. The projected sales volume may be calculated using the histor-
25 ical method or the opt-in method. The provider shall provide notice to
26 the superintendent on which method they intend to use across all
27 instances of sales-based financing offered in calculating estimated
28 annual percentage rate pursuant to this section.

1 (i) The provider using the historical method shall use an average
2 historical volume of sales or revenue by which the financing's payment
3 amounts are based and the estimated annual percentage rate is calcu-
4 lated. The provider shall fix the historical time period used to calcu-
5 late the average historical volume and use such period for all disclo-
6 sure purposes for all sales-based financing products offered. The fixed
7 historical time period shall either be the preceding time period from
8 the specific offer or, alternatively, the provider may use average sales
9 for the same number of months with the highest sales volume within the
10 past twelve months. The fixed historical time period shall be no less
11 than one month and not exceed twelve months.

12 (ii) The provider using the opt-in method shall determine the esti-
13 mated annual percentage rate, the estimated term, and the projected
14 payments, using a projected sales volume that the provider elects for
15 each disclosure, provided, that they participate in a review process
16 prescribed by the superintendent. A provider shall, on an annual basis,
17 report data to the superintendent of estimated annual percentage rates
18 disclosed to the recipient and actual retrospective annual percentage
19 rates of completed transactions. The report shall contain such informa-
20 tion as the superintendent, by rule or regulation, may prescribe as
21 necessary or appropriate for the purpose of making a determination of
22 whether the deviation between the estimated annual percentage rate and
23 actual retrospective annual percentage rates of completed transactions
24 was reasonable. The superintendent shall establish the method of report-
25 ing and may, upon a finding that the use of projected sales volume by
26 the provider has resulted in an unacceptable deviation between estimated
27 and actual annual percentage rate, require the provider to use the
28 historical method. The superintendent may consider unusual and extraor-

1 dinary circumstances impacting the provider's deviation between esti-
2 mated and actual annual percentage rate in the determination of such
3 finding.

4 (d) The total repayment amount, which is the disbursement amount plus
5 the finance charge.

6 (e) The estimated term is the period of time required for the periodic
7 payments, based on the projected sales volume, to equal the total amount
8 required to be repaid.

9 (f) The payment amounts, based on the projected sales volume:

10 (i) for payment amounts that are fixed, the payment amounts and
11 frequency (e.g., daily, weekly, monthly), and, if the payment frequency
12 is other than monthly, the amount of the average projected payments per
13 month; or

14 (ii) for payment amounts that are variable, a payment schedule or a
15 description of the method used to calculate the amounts and frequency of
16 payments, and the amount of the average projected payments per month.

17 (g) A description of all other potential fees and charges not included
18 in the finance charge, including, but not limited to, draw fees, late
19 payment fees, and returned payment fees.

20 (h) Were the recipient to elect to pay off or refinance the commercial
21 financing prior to full repayment, the provider must disclose:

22 (i) whether the recipient would be required to pay any finance charges
23 other than interest accrued since their last payment. If so, disclosure
24 of the percentage of any unpaid portion of the finance charge and maxi-
25 mum dollar amount the recipient could be required to pay; and

26 (ii) whether the recipient would be required to pay any additional
27 fees not already included in the finance charge.

1 (i) A description of collateral requirements or security interests, if
2 any.

3 § 804. Closed-end commercial financing disclosure requirements. A
4 provider, subject to this article, shall provide the following disclo-
5 sures to a recipient at the time of extending a specific offer for
6 closed-end financing according to formatting prescribed by the super-
7 intendent:

8 (a) The total amount of the commercial financing, and the disbursement
9 amount, if different from the financing amount, after any fees deducted
10 or withheld at disbursement.

11 (b) The finance charge.

12 (c) The annual percentage rate, using only the words annual percentage
13 rate or the abbreviation "APR", expressed as a yearly rate, inclusive of
14 any fees and finance charges that cannot be avoided by a recipient, and
15 calculated in accordance with the federal Truth in Lending Act, Regu-
16 lation Z, 12 C.F.R. § 1026.22, regardless of whether such act or such
17 regulation would require such a calculation.

18 (d) The total repayment amount, which is the disbursement amount plus
19 the finance charge.

20 (e) The term of the financing.

21 (f) The payment amounts:

22 (i) for payment amounts that are fixed, the payment amounts and
23 frequency (e.g., daily, weekly, monthly), and, if the term is longer
24 than one month, the average monthly payment amount; or

25 (ii) for payment amounts that are variable, a full payment schedule or
26 a description of the method used to calculate the amounts and frequency
27 of payments, and, if the term is longer than one month, the estimated
28 average monthly payment amount.

1 (g) A description of all other potential fees and charges that can be
2 avoided by the recipient, including, but not limited to, late payment
3 fees and returned payment fees.

4 (h) Were the recipient to elect to pay off or refinance the commercial
5 financing prior to full repayment, the provider must disclose:

6 (i) whether the recipient would be required to pay any finance charges
7 other than interest accrued since their last payment. If so, disclosure
8 of the percentage of any unpaid portion of the finance charge and maxi-
9 mum dollar amount the recipient could be required to pay; and

10 (ii) whether the recipient would be required to pay any additional
11 fees not already included in the finance charge.

12 (i) A description of collateral requirements or security interests, if
13 any.

14 § 805. Open-end commercial financing disclosure requirements. A
15 provider, subject to this article, shall provide the following disclo-
16 sures to a recipient at the time of extending a specific offer for open-
17 end financing according to formatting prescribed by the superintendent:

18 (a) The maximum amount of credit available to the recipient (e.g., the
19 credit line amount), and the amount scheduled to be drawn by the recipi-
20 ent at the time the offer is extended, if any, less any fees deducted or
21 withheld at disbursement.

22 (b) The finance charge.

23 (c) The annual percentage rate, using only the words annual percentage
24 rate or the abbreviation "APR", expressed as a nominal yearly rate,
25 inclusive of any fees and finance charges that cannot be avoided by a
26 recipient, and calculated in accordance with the federal Truth in Lend-
27 ing Act, Regulation Z, 12 C.F.R. § 1026.22 and based on the maximum
28 amount of credit available to the recipient and the term resulting from

1 making the minimum required payments term as disclosed, regardless of
2 whether such act or such regulation would require such a calculation.

3 (d) The total repayment amount, which is the draw amount, less any
4 fees deducted or withheld at disbursement, plus the finance charge. The
5 total repayment amount shall assume a draw amount equal to the maximum
6 amount of credit available to the recipient if drawn and held for the
7 duration of the term or draw period.

8 (e) The term of the plan, if applicable, or the period over which a
9 draw is amortized.

10 (f) The payment frequency and amounts, based on the assumptions used
11 in the calculation of the annual percentage rate, including a
12 description of payment amount requirements such as a minimum payment
13 amount, and if the payment frequency is other than monthly, the amount
14 of the average projected payments per month. For payment amounts that
15 are variable, the provider should include a payment schedule, or a
16 description of the method used to calculate the amounts and frequency of
17 payments, and the estimated average monthly payment amount.

18 (g) A description of all other potential fees and charges that can be
19 avoided by the recipient, including, but not limited to, draw fees, late
20 payment fees, and returned payment fees.

21 (h) Were the recipient to elect to pay off or refinance the commercial
22 financing prior to full repayment, the provider must disclose:

23 (i) whether the recipient would be required to pay any finance charges
24 other than interest accrued since their last payment. If so, disclosure
25 of the percentage of any unpaid portion of the finance charge and maxi-
26 mum dollar amount the recipient could be required to pay; and

27 (ii) whether the recipient would be required to pay any additional
28 fees not already included in the finance charge.

1 (i) A description of collateral requirements or security interests, if
2 any.

3 § 806. Factoring transaction disclosure requirements. A provider,
4 subject to this article, shall provide the following disclosures to a
5 recipient at the time of extending a specific offer for a factoring
6 transaction according to formatting prescribed by the superintendent:

7 (a) The amount of the receivables purchase price paid to the recipient
8 and, if different from the purchase price, the amount disbursed to the
9 recipient after any fees deducted or withheld at disbursement.

10 (b) The finance charge.

11 (c) The estimated annual percentage rate, using that term, calculated
12 according to the federal Truth in Lending Act, Regulation Z, 12 C.F.R. §
13 1026 Appendix J, as a "single advance, single payment transaction",
14 regardless of whether such act or such regulation would require such a
15 calculation. To calculate the estimated annual percentage rate, the
16 purchase amount is considered the financing amount, the purchase amount
17 minus the finance charge is considered the payment amount, and the term
18 is established by the payment due date of the receivables. As an alter-
19 nate method of establishing the term, the provider may estimate the term
20 for a factoring transaction as the average payment period, its histor-
21 ical data over a period not to exceed the previous twelve months,
22 concerning payment invoices paid by the party owing the accounts receiv-
23 able in question.

24 (d) The total payment amount, which is the purchase amount plus the
25 finance charge.

26 (e) A description of all other potential fees and charges that can be
27 avoided by the recipient.

1 (f) A description of the receivables purchased and any additional
2 collateral requirements or security interests.

3 § 807. Other forms of financing disclosure requirements. The super-
4 intendent may require disclosure by a provider extending a specific
5 offer of commercial financing which is not open-end financing, closed-
6 end financing, sales-based financing, or factoring transaction but
7 otherwise meets the definition of commercial financing as provided in
8 this article. Subject to such rules and regulations by the superinten-
9 dent, a provider subject to this article shall provide the following
10 disclosures to a recipient at the time of extending a specific offer of
11 other forms of financing according to formatting prescribed by the
12 superintendent:

13 (a) The total amount of the commercial financing, and the disbursement
14 amount, if different from the financing amount, after any fees deducted
15 or withheld at disbursement.

16 (b) The finance charge.

17 (c) The annual percentage rate, using only the words annual percentage
18 rate or the abbreviation "APR", expressed as a yearly rate, inclusive of
19 any fees and finance charges, and calculated in accordance with the
20 relevant sections of the federal Truth in Lending Act, Regulation Z or
21 this article, regardless of whether such act or such regulation would
22 require such a calculation.

23 (d) The total repayment amount which is the disbursement amount plus
24 the finance charge.

25 (e) The term of the financing.

26 (f) The payment amounts:

1 (i) for payment amounts that are fixed, the payment amounts and
2 frequency (e.g., daily, weekly, monthly), and the average monthly
3 payment amount; or

4 (ii) for payment amounts that are variable, a payment schedule or a
5 description of the method used to calculate the amounts and frequency of
6 payments, and the estimated average monthly payment amount.

7 (g) A description of all other potential fees and charges that can be
8 avoided by the recipient, including, but not limited to, late payment
9 fees and returned payment fees.

10 (h) Were the recipient to elect to pay off or refinance the commercial
11 financing prior to full repayment, the provider must disclose:

12 (i) whether the recipient would be required to pay any finance charges
13 other than interest accrued since their last payment. If so, disclosure
14 of the percentage of any unpaid portion of the finance charge and maxi-
15 mum dollar amount the recipient could be required to pay; and

16 (ii) whether the recipient would be required to pay any additional
17 fees not already included in the finance charge.

18 (i) A description of collateral requirements or security interests, if
19 any.

20 § 812. Penalties. (a) Upon a finding by the superintendent that a
21 provider has violated the provisions of this article or the rules or
22 regulations promulgated hereunder, the provider shall be ordered to pay
23 to the people of this state a civil penalty for each violation of this
24 article or any regulation or policy promulgated hereunder a sum not to
25 exceed two thousand dollars for each violation or where such violation
26 is willful ten thousand dollars for each violation.

27 (b) In addition to any penalty imposed pursuant to subdivision (a) of
28 this section, upon a finding by the superintendent that a provider has

1 knowingly violated this article, the superintendent may order additional
2 relief, including, but not limited to, restitution or a permanent or
3 preliminary injunction on behalf of any recipient affected by the
4 violation.

5 § 2. Section 2 of a chapter of the laws of 2020, amending the finan-
6 cial services law relating to requiring certain providers that extend
7 specific terms of commercial financing to a recipient to disclose
8 certain information about the offer to the recipient, as proposed in
9 legislative bills numbers S.5470-B and A.10118-A, is amended to read as
10 follows:

11 § 2. Nothing in this act shall authorize transactions in this state
12 which are otherwise illegal or allow an entity or individual to operate
13 in this state without a license where a license would otherwise be
14 required.

15 § 3. This act shall take effect [on the one hundred eightieth day
16 after it shall have become a law] January 1, 2022. Effective immediate-
17 ly, the addition, amendment and/or repeal of any rule or regulation,
18 necessary for the implementation of this act on its effective date are
19 authorized to be made and completed by the superintendent of financial
20 services on or before such effective date.

21 § 3. This act shall take effect immediately; provided, however, that
22 the amendments to sections 802, 803, 804, 805, 806, 807 and 812 of the
23 financial services law made by section 1 of this act shall take effect
24 on the same date and in the same manner as a chapter of the laws of 2020
25 amending the financial services law relating to requiring certain
26 providers that extend specific terms of commercial financing to a recip-
27 ient to disclose certain information about the offer to the recipient,
28 as proposed in legislative bills numbers S.5470-B and A.10118-A.