

LAWS OF NEW YORK, 2021

CHAPTER 61

1 AN ACT to amend the financial services law, in relation to exempting
2 certain commercial financing transactions from certain disclosure
3 requirements; and to amend a chapter of the laws of 2020 amending the
4 financial services law relating to requiring certain providers that
5 extend specific terms of commercial financing to a recipient to
6 disclose certain information about the offer to the recipient, as
7 proposed in legislative bills numbers S.5470-B and A.10118-A, in
8 relation to the effectiveness thereof

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10 Became a law February 16, 2021, with the approval of the Governor.

11 Passed by a majority vote, three-fifths being present.
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13 The People of the State of New York, represented in Senate and Assem-
14 bly, do enact as follows:
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16 Section 1. Sections 802, 803, 804, 805, 806, 807 and 812 of the finan-
17 cial services law, as added by a chapter of the laws of 2020 amending
18 the financial services law relating to requiring certain providers that
19 extend specific terms of commercial financing to a recipient to disclose
20 certain information about the offer to the recipient, as proposed in
21 legislative bills numbers S.5470-B and A.10118-A, are amended to read as
22 follows:

23 § 802. Exemptions. This article shall not apply to, and shall not
24 place any additional requirements or obligations upon, any of the
25 following:

26 (a) a financial institution;

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

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

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

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

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

40 (g) an individual commercial financing transaction in an amount over
41 two million five hundred thousand dollars~~[or]~~; or

42 (h) a commercial financing transaction in which the recipient is a
43 dealer as defined in section four hundred fifteen of the vehicle and
44 traffic law, or an affiliate of such a dealer, or a rental vehicle
45 company as defined in section three hundred ninety-six-z of the general
46 business law, or an affiliate of such a company pursuant to a commercial
47 financing agreement or commercial open-end credit plan of at least fifty
48 thousand dollars, including any commercial loan made pursuant to such a
49 commercial financing transaction.

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51 EXPLANATION--Matter in *italics* is new; matter in brackets [-] is old law
52 to be omitted.

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3 § 803. Sales-based financing 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 of sales-based
6 financing according to formatting prescribed by the superintendent:

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

10 (b) The finance charge.

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

25 (i) The provider using the historical method shall use an average
26 historical volume of sales or revenue by which the financing's payment
27 amounts are based and the estimated annual percentage rate is calcu-
28 lated. The provider shall fix the historical time period used to calcu-
29 late the average historical volume and use such period for all disclo-
30 sure purposes for all sales-based financing products offered. The fixed
31 historical time period shall either be the preceding time period from
32 the specific offer or, alternatively, the provider may use average sales
33 for the same number of months with the highest sales volume within the
34 past twelve months. The fixed historical time period shall be no less
35 than one month and not exceed twelve months.

36 (ii) The provider using the opt-in method shall determine the esti-
37 mated annual percentage rate, the estimated term, and the projected
38 payments, using a projected sales volume that the provider elects for
39 each disclosure, provided, that they participate in a review process
40 prescribed by the superintendent. A provider shall, on an annual basis,
41 report data to the superintendent of estimated annual percentage rates
42 disclosed to the recipient and actual retrospective annual percentage
43 rates of completed transactions. The report shall contain such informa-
44 tion as the superintendent, by rule or regulation, may prescribe as
45 necessary or appropriate for the purpose of making a determination of
46 whether the deviation between the estimated annual percentage rate and
47 actual retrospective annual percentage rates of completed transactions
48 was reasonable. The superintendent shall establish the method of report-
49 ing and may, upon a finding that the use of projected sales volume by
50 the provider has resulted in an unacceptable deviation between estimated
51 and actual annual percentage rate, require the provider to use the

52 historical method. The superintendent may consider unusual and extraor-
53 dinary circumstances impacting the provider's deviation between esti-
54 mated and actual annual percentage rate in the determination of such
55 finding.

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

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

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

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

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

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

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

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

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

25 (i) A description of collateral requirements or security interests, if
26 any.

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

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

35 (b) The finance charge.

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

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

44 (e) The term of the financing.

45 (f) The payment amounts:

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

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

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

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

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

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

9 (i) A description of collateral requirements or security interests, if
10 any.

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

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

19 (b) The finance charge.

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

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

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

35 (f) The payment frequency and amounts, based on the assumptions used
36 in the calculation of the annual percentage rate, including a
37 description of payment amount requirements such as a minimum payment
38 amount, and if the payment frequency is other than monthly, the amount
39 of the average projected payments per month. For payment amounts that
40 are variable, the provider should include a payment schedule, or a
41 description of the method used to calculate the amounts and frequency of
42 payments, and the estimated average monthly payment amount.

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

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

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

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

54 (i) A description of collateral requirements or security interests, if
55 any.

56 § 806. Factoring transaction disclosure requirements. A provider,
57 subject to this article, shall provide the following disclosures to a

3 recipient at the time of extending a specific offer for a factoring
4 transaction according to formatting prescribed by the superintendent:

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

8 (b) The finance charge.

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

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

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

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

28 § 807. Other forms of financing disclosure requirements. The super-
29 intendent may require disclosure by a provider extending a specific
30 offer of commercial financing which is not open-end financing, closed-
31 end financing, sales-based financing, or factoring transaction but
32 otherwise meets the definition of commercial financing as provided in
33 this article. Subject to such rules and regulations by the superinten-
34 dent, a provider subject to this article shall provide the following
35 disclosures to a recipient at the time of extending a specific offer of
36 other forms of financing according to formatting prescribed by the
37 superintendent:

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

41 (b) The finance charge.

42 (c) The annual percentage rate, using only the words annual percentage

43 rate or the abbreviation "APR", expressed as a yearly rate, inclusive of
44 any fees and finance charges, and calculated in accordance with the
45 relevant sections of the federal Truth in Lending Act, Regulation Z or
46 this article, regardless of whether such act or such regulation would
47 require such a calculation.

48 (d) The total repayment amount which is the disbursement amount plus
49 the finance charge.

50 (e) The term of the financing.

51 (f) The payment amounts:

52 (i) for payment amounts that are fixed, the payment amounts and
53 frequency (e.g., daily, weekly, monthly), and the average monthly
54 payment amount; or

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

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

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

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

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

14 (i) A description of collateral requirements or security interests, if
15 any.

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

23 (b) In addition to any penalty imposed pursuant to subdivision (a) of
24 this section, upon a finding by the superintendent that a provider has
25 knowingly violated this article, the superintendent may order additional
26 relief, including, but not limited to, restitution or a permanent or
27 preliminary injunction on behalf of any recipient affected by the
28 violation.

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

35 § 2. Nothing in this act shall authorize transactions in this state
36 which are otherwise illegal or allow an entity or individual to operate
37 in this state without a license where a license would otherwise be
38 required.

39 § 3. This act shall take effect [~~on the one hundred eightieth day~~]

40 ~~[after it shall have become a law]~~ January 1, 2022. Effective immediate-
41 ly, the addition, amendment and/or repeal of any rule or regulation,
42 necessary for the implementation of this act on its effective date are
43 authorized to be made and completed by the superintendent of financial
44 services on or before such effective date.

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

3 The Legislature of the STATE OF NEW YORK ss:

4 Pursuant to the authority vested in us by section 70-b of the Public
5 Officers Law, we hereby jointly certify that this slip copy of this
6 session law was printed under our direction and, in accordance with such
7 section, is entitled to be read into evidence.

8
9 ANDREA STEWART-COUSINS
10 Temporary President of the Senate

CARL E. HEASTIE
Speaker of the Assembly