

The House Committee on Banks and Banking offers the following substitute to HB 84:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling  
2 and other trade practices, so as to provide for commercial financing disclosures; to require  
3 certain persons who provide commercial financing transactions to make certain disclosures;  
4 to provide for penalties; to provide for applicability; to provide for definitions; to provide for  
5 related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other  
9 trade practices, is amended by adding a new Code section to read as follows:

10 "10-1-393.18.

11 (a) As used in this Code section, the term:

12 (1) 'Accounts receivable purchase transaction' means a transaction in which a business  
13 forwards or otherwise sells to a person all or a portion of the business's accounts, as  
14 defined in Code Section 11-9-102, or payment intangibles, as defined in Code Section  
15 11-9-102, at a discount to the accounts' or payment intangibles' expected value.

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16 (2) 'Advance fee' means any consideration which is assessed or collected prior to the  
17 closing of a commercial financing transaction by a broker.

18 (3) 'Broker' means a person who, for compensation or the expectation of compensation,  
19 arranges a commercial financing transaction between a third party and a business in the  
20 state that would, if executed, be binding upon that third party and communicates that  
21 offer to a business located in this state. Such term excludes a 'provider,' and any  
22 individual or entity whose compensation is not based or dependent upon on the terms of  
23 the specific commercial financing transaction obtained or offered.

24 (4) 'Business' means a private enterprise carried on for the purpose of gain or economic  
25 profit.

26 (5)(A) 'Business purpose transaction' means a transaction from which the resulting  
27 proceeds that a business receives are:

28 (i) Provided to the business; or

29 (ii) Intended to be used to carry on the business.

30 (B) Such term shall not include a transaction from which the resulting proceeds are  
31 intended to be used for personal, family, or household purposes.

32 (C) For purposes of determining whether a transaction is a business purpose  
33 transaction, a provider may rely on a written statement of intended purpose, signed by  
34 an individual authorized to sign on behalf of the business. Such written statement may  
35 be contained in an application, agreement, or other document signed by an individual  
36 authorized to sign on behalf of the business.

37 (6) 'Commercial financing transaction' means a business purpose transaction:

38 (A) Under which a person extends a business a commercial loan or a commercial  
39 open-end credit plan; or

40 (B) That is an accounts receivable purchase transaction.

41 (7) 'Commercial loan' means a loan to a business, regardless of whether the loan is  
42 secured.

43 (8) 'Commercial open-end credit plan' means commercial financing extended to a  
44 business on terms under which:

45 (A) The creditor reasonably contemplates repeat transactions; and

46 (B) Subject to any limit set by the creditor, the amount of financing that the creditor  
47 may extend to the business during the term of the plan is made available to the extent  
48 that any outstanding balance is repaid.

49 (9) 'Motor vehicle dealer' means a dealer as defined in Code Section 40-2-39 or a used  
50 motor vehicle dealer as defined in Code Section 43-47-2.

51 (10) 'Provider' means a person who consummates more than five commercial financing  
52 transactions in this state during any calendar year and includes, but is not limited to, a  
53 person who, under a written agreement with a depository institution, offers one or more  
54 commercial financing products provided by the depository institution via an online  
55 platform that the person administers.

56 (b) The provisions of this Code section shall not apply to:

57 (1) A provider that is a federally insured depository financial institution;

58 (2) A provider that is:

59 (A) A subsidiary, an affiliate, or a holding company of a federally insured depository  
60 financial institution; or

61 (B) A service corporation for a federally insured depository financial institution;

62 (3) A provider that is regulated under the federal Farm Credit Act, 12 U.S.C. Section  
63 2001, et seq.;

64 (4) A provider that is licensed as a money transmitter in accordance with Article 4 of  
65 Chapter 1 of Title 7;

66 (5) A provider that consummates five or fewer commercial financing transactions in the  
67 state during any 12 month period;

68 (6) A commercial financing transaction secured by real property;

- 69 (7) A commercial financing transaction that is a lease as defined in Code Section  
70 11-2A-103;
- 71 (8) A commercial financing transaction that is a purchase money obligation as defined  
72 in Code Section 11-9-103;
- 73 (9) A commercial financing transaction that:
- 74 (A) Involves a commercial loan or a commercial open-end credit plan;  
75 (B) Is \$50,000.00 or more; and  
76 (C) Extends the commercial loan or the commercial open-end credit plan to:
- 77 (i) A motor vehicle dealer or the motor vehicle dealer's affiliate; or  
78 (ii) A motor vehicle rental company as defined in Code Section 40-2-167 or the  
79 motor vehicle rental company's affiliate;
- 80 (10) A commercial financing transaction offered by a person in connection with the sale  
81 or lease of a product or service that:
- 82 (A) The person manufactures, licenses, or distributes; or  
83 (B) The person's parent company or the person's owned and controlled subsidiary  
84 manufactures, licenses, or distributes; or
- 85 (11) A commercial financing transaction of more than \$500,000.00.
- 86 (c) For purposes of Chapter 1 of Title 7, a provider's characterization of an accounts  
87 receivable purchase transaction as a purchase shall be conclusive that the accounts  
88 receivable purchase transaction is not a loan or a transaction for the use, forbearance, or  
89 detention of money.
- 90 (d) For purposes of Chapter 1 of Title 7, a provider extending a specific offer for a  
91 commercial financing transaction on behalf of a depository institution shall not be  
92 construed to mean that the provider engaged in lending or financing or originated that loan  
93 or financing.

- 94 (e)(1) Before consummating a commercial financing transaction, a provider shall  
95 disclose the terms of the commercial financing transaction in accordance with this Code  
96 section.
- 97 (2) Only one disclosure must be provided for each commercial financing transaction, and  
98 a disclosure is not required as a result of the modification, forbearance, or change to a  
99 consummated commercial financing transaction.
- 100 (3) A provider shall disclose the following information in connection with each  
101 commercial financing transaction:
- 102 (A) The total amount of funds provided to the business under the terms of the  
103 commercial financing transaction;
- 104 (B) The total amount of funds disbursed to the business under the terms of the  
105 commercial financing transaction, if less than the amount described in  
106 subparagraph (A) of this paragraph, as a result of any fees deducted or withheld at  
107 disbursement, any amount paid to the provider to satisfy a prior balance, and any  
108 amount paid to a third party on behalf of the business;
- 109 (C) The total amount to be paid to the provider under the terms of the commercial  
110 financing transaction;
- 111 (D) The total dollar cost of the commercial financing transaction, calculated by finding  
112 the difference between:
- 113 (i) The amount described in subparagraph (A) of this paragraph; and  
114 (ii) The amount described in subparagraph (C) of this paragraph;
- 115 (E)(i) The manner, frequency, and amount of each payment; or  
116 (ii) If the amount of each payment may vary, the manner, frequency, and estimated  
117 amount of the initial payment; and
- 118 (F) A statement of whether there are any costs or discounts associated with prepayment  
119 under the commercial financing transaction, including a reference to the paragraph in  
120 the commercial financing transaction agreement that creates each cost or discount.

121 (4) The commercial financing transaction agreement shall include a description of the  
122 methodology for calculating any variable payment amount and the circumstances that  
123 may cause a payment amount to vary.

124 (5) The provisions of this subsection shall apply to any commercial financing transaction  
125 consummated on or after January 1, 2024.

126 (f) No broker shall:

127 (1) Assess, collect, or solicit an advance fee from a business to provide services as a  
128 broker; provided, however, that nothing contained in this paragraph shall preclude a  
129 broker from soliciting a potential business to pay for, or preclude a potential business  
130 from paying for, actual services necessary to apply for a commercial financing  
131 transaction, including, but not limited to, a credit check or an appraisal of security, where  
132 such payment is made by check or money order payable to a party independent of the  
133 broker;

134 (2) Make or use any false or misleading representations or omit any material fact in the  
135 offer or sale of the services of a broker or engage, directly or indirectly, in any act that  
136 operates or would operate as fraud or deception upon any person in connection with the  
137 offer or sale of the services of a broker, notwithstanding the absence of reliance by the  
138 buyer;

139 (3) Make or use any false or deceptive representation in its business dealings; or

140 (4) Offer the services of a broker by making, publishing, disseminating, circulating, or  
141 placing before the public within this state an advertisement in a newspaper or other  
142 publication or an advertisement in the form of a book, notice, handbill, poster, sign,  
143 billboard, bill, circular, pamphlet, letter, photograph, or motion picture or an  
144 advertisement circulated by radio, loud-speaker, telephone, television, telegraph, or in  
145 any other way, where said offer or advertisement does not disclose the name, business  
146 address, and telephone number of the broker. For purposes of this paragraph, the broker  
147 shall disclose the actual address and telephone number of the business of the broker in

148 addition to the address and telephone number of any forwarding service that the broker  
149 may use.

150 (g) The Attorney General may:

151 (1) Receive and act on complaints;

152 (2) Take action designed to obtain voluntary compliance with this Code section; and

153 (3) Commence administrative or judicial proceedings on the Attorney General's own  
154 initiative to enforce compliance with this Code section.

155 (h) A person who violates a provision of this Code section is subject to a civil penalty of  
156 \$500.00 per violation, not to exceed \$20,000.00 for all violations arising from the use of  
157 the same transaction documentation or materials.

158 (i) A person who violates a provision of this Code section after receiving written notice  
159 of a prior violation is subject to a civil penalty of \$1,000.00 per violation, not to exceed  
160 \$50,000.00 for all violations arising from the use of the same transaction documentation  
161 or materials.

162 (j) Nothing in this Code section creates a private right of action against any person based  
163 on failure to comply with the provisions of this Code section.

164 (k) A violation of this Code section shall not affect the enforceability of any underlying  
165 agreement."

166 **SECTION 2.**

167 All laws and parts of laws in conflict with this Act are repealed.