

SENATE BILL NO. 753

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN (16).

4002S.01I

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 427, RSMo, by adding thereto one new section relating to the disclosure of information pertaining to certain commercial financing transactions, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 427, RSMo, is amended by adding thereto
2 one new section, to be known as section 427.300, to read as
3 follows:

427.300. 1. This section shall be known, and may be
2 cited as, the "Commercial Financing Disclosure Law".

3 2. For purposes of this section, the following terms
4 mean:

5 (1) "Account",

6 (a) Includes:

7 a. A right to payment of a monetary obligation,
8 whether or not earned by performance, for one of the
9 following:

10 (i) Property that has been or is to be sold, leased,
11 licensed, assigned, or otherwise disposed of;

12 (ii) Services rendered or to be rendered;

13 (iii) A policy of insurance issued or to be issued;

14 (iv) A secondary obligation incurred or to be incurred;

15 (v) Energy provided or to be provided;

16 (vi) The use or hire of a vessel under a charter or
17 other contract;

18 (vii) Arising out of the use of a credit or charge
19 card or information contained on or for use with the card; or

20 (viii) As winnings in a lottery or other game of
21 chance operated or sponsored by a state, governmental unit
22 of a state, or person licensed or authorized to operate the
23 game by a state or governmental unit of a state; and

24 b. Health-care-insurance receivables.

25 (b) "Account" does not include:

26 a. Rights to payment evidenced by chattel paper or an
27 instrument;

28 b. Commercial tort claims;

29 c. Deposit accounts;

30 d. Investment property;

31 e. Letter-of-credit rights or letters of credit; or

32 f. Rights to payment for money or funds advanced or
33 sold, other than rights arising out of the use of a credit
34 or charge card or information contained on or for use with
35 the card.

36 (2) "Accounts receivable purchase transaction", any
37 transaction in which the business forwards or otherwise
38 sells to the provider all or a portion of the business's
39 accounts or payment intangibles at a discount to their
40 expected value. The provider's characterization of an
41 accounts receivable purchase transaction as a purchase is
42 conclusive that the accounts receivable purchase transaction
43 is not a loan or a transaction for the use, forbearance, or
44 detention of money;

45 (3) "Broker", any person who, for compensation or the
46 expectation of compensation, obtains a commercial financing
47 transaction or an offer for a commercial financing
48 transaction from a third party that would, if executed, be
49 binding upon that third party and communicates that offer to

50 a business located in this state. The term "broker"
51 excludes a "provider", or any individual or entity whose
52 compensation is not based or dependent upon on the terms of
53 the specific commercial financing transaction obtained or
54 offered;

55 (4) "Business", an individual or group of individuals,
56 sole proprietorship, corporation, limited liability company,
57 trust, estate, cooperative, association, or limited or
58 general partnership engaged in a business activity;

59 (5) "Business purpose transaction", any transaction
60 where the proceeds are provided to a business or are
61 intended to be used to carry on a business and not for
62 personal, family, or household purposes. For purposes of
63 determining whether a transaction is a business purpose
64 transaction, the provider may rely on any written statement
65 of intended purpose signed by the business. The statement
66 may be a separate statement or may be contained in an
67 application, agreement, or other document signed by the
68 business or the business owner or owners;

69 (6) "Commercial financing facility", a provider's plan
70 for purchasing multiple accounts receivable from the
71 recipient over a period of time pursuant to an agreement
72 that sets forth the terms and conditions governing the use
73 of the facility;

74 (7) "Commercial financing transaction", any commercial
75 loan, accounts receivable purchase transaction, commercial
76 open-end credit plan or each to the extent the transaction
77 is a business purpose transaction;

78 (8) "Commercial loan", a loan to a business, whether
79 secured or unsecured;

80 (9) "Commercial open-end credit plan", commercial
81 financing extended by any provider under a plan in which:

82 (a) The provider reasonably contemplates repeat
83 transactions; and

84 (b) The amount of financing that may be extended to
85 the business during the term of the plan, up to any limit
86 set by the provider, is generally made available to the
87 extent that any outstanding balance is repaid;

88 (10) "Depository institution", any of the following:

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

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

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

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

108 (12) "Payment intangible", a general intangible under
109 which the account debtor's principal obligation is a
110 monetary obligation;

111 (13) "Provider", a person who consummates more than
112 five commercial financing transactions to a business located
113 in this state in any calendar year. "Provider" also

114 includes a person that enters into a written agreement with
115 a depository institution to arrange for the extension of a
116 commercial financing transaction by the depository
117 institution to a business via an online lending platform
118 administered by the person. The fact that a provider
119 extends a specific offer for a commercial financing
120 transaction on behalf of a depository institution shall not
121 be construed to mean that the provider engaged in lending or
122 financing or originated that loan or financing.

123 3. (1) A provider that consummates a commercial
124 financing transaction shall disclose the terms of the
125 commercial financing transaction as required by this
126 section. The disclosures shall be provided at or before
127 consummation of the transaction. Only one disclosure is
128 required for each commercial financing transaction, and a
129 disclosure is not required as a result of the modification,
130 forbearance, or change to a consummated commercial financing
131 transaction.

132 (2) A provider shall disclose the following in
133 connection with each commercial financing transaction:

134 (a) The total amount of funds provided to the business
135 under the terms of the commercial financing transaction.
136 This disclosure shall be labeled "Total Amount of Funds
137 Provided";

138 (b) The total amount of funds disbursed to the
139 business under the terms of the commercial financing
140 transaction, if less than the total amount of funds
141 provided, as a result of any fees deducted or withheld at
142 disbursement and any amount paid to a third party on behalf
143 of the business. This disclosure shall be labeled "Total
144 Amount of Funds Disbursed";

145 (c) The total amount to be paid to the provider
146 pursuant to the commercial financing transaction agreement.
147 This disclosure shall be labeled "Total of Payments";

148 (d) The total dollar cost of the commercial financing
149 transaction under the terms of the agreement, derived by
150 subtracting the total amount of funds provided from the
151 total of payments. This calculation shall include any fees
152 or charges deducted by the provider from the "Total Amount
153 of Funds Provided". This disclosure shall be labeled "Total
154 Dollar Cost of Financing";

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

163 (f) A statement of whether there are any costs or
164 discounts associated with prepayment of the commercial
165 financing transaction including a reference to the paragraph
166 in the agreement that creates the contractual rights of the
167 parties related to prepayment. This disclosure shall be
168 labeled "Prepayment".

169 (3) A provider that consummates a commercial financing
170 facility may provide disclosures required by subdivision (2)
171 of this subsection that are based on an example of a
172 transaction that could occur under the agreement. The
173 example shall be based on an account receivable total face
174 amount owed of ten thousand dollars. Only one disclosure is
175 required for each commercial financing facility, and a
176 disclosure is not required as result of a modification,

177 forbearance, or change to the facility. A new disclosure is
178 not required each time accounts receivable are purchased
179 under the facility.

180 4. This section shall not apply to the following:

181 (1) A provider that is a depository institution or a
182 subsidiary or service corporation that is:

183 (a) Owned and controlled by a depository institution;
184 and

185 (b) Regulated by a federal banking agency;

186 (2) A provider that is a lender regulated under the
187 federal Farm Credit Act, 12 U.S.C. Section 2001, et seq.;

188 (3) A commercial financing transaction that is:

189 (a) Secured by real property;

190 (b) A lease; or

191 (c) A purchase money obligation that is incurred as
192 all or part of the price of the collateral or for value
193 given to enable the business to acquire rights in or the use
194 of the collateral if the value is in fact so used;

195 (4) A commercial financing transaction in which the
196 recipient is a motor vehicle dealer or an affiliate of such
197 a dealer, or a vehicle rental company, or an affiliate of
198 such a company, pursuant to a commercial loan or commercial
199 open-end credit plan of at least fifty thousand dollars or a
200 commercial financing transaction offered by a person in
201 connection with the sale or lease of products or services
202 that such person manufactures, licenses, or distributes, or
203 whose parent company or any of its directly or indirectly
204 owned and controlled subsidiaries manufactures, licenses,
205 or distributes;

206 (5) A commercial financing transaction that is a
207 factoring transaction, purchase, sale, advance, or similar
208 of accounts receivables owed to a health care provider

209 because of a patient's personal injury treated by the health
210 care provider;

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

215 (7) A provider that consummates no more than five
216 commercial financing transactions in this state in a twelve-
217 month period;

218 (8) A commercial financing transaction of more than
219 five hundred thousand dollars; or

220 (9) A commercial financing transaction that is a
221 premium finance agreement as defined in subdivision (3) of
222 section 364.100 offered or entered into by a provider that
223 is a registered premium finance company.

224 5. (1) No person shall engage in business as a broker
225 for commercial financing within this state for compensation,
226 unless prior to conducting such business, the person has
227 filed a registration with the division of finance within the
228 department of commerce and insurance and has on file a good
229 and sufficient bond as specified in this subsection. The
230 registration shall be effective upon receipt by the division
231 of finance of a completed registration form and the required
232 registration fee, and shall remain effective until the time
233 of renewal.

234 (2) After filing an initial registration form, a
235 broker shall file, on or before January thirty-first of each
236 year, a renewal registration form along with the required
237 renewal registration fee.

238 (3) The broker shall pay a one hundred dollar
239 registration fee upon the filing of an initial registration

240 and a fifty dollar renewal registration fee upon the filing
241 of a renewal registration.

242 (4) The registration form required by this subsection
243 shall include the following:

244 (a) The name of the broker;

245 (b) The name in which the broker is transacted if
246 different from that stated in paragraph (a) of this
247 subdivision;

248 (c) The address of the broker's principal office,
249 which may be outside this state;

250 (d) Whether any officer, director, manager, operator,
251 or principal of the broker has been convicted of a felony
252 involving an act of fraud, dishonesty, breach of trust, or
253 money laundering; and

254 (e) The name and address in this state of a designated
255 agent upon whom service of process may be made.

256 (5) If information in a registration form changes or
257 otherwise becomes inaccurate after filing, the broker shall
258 not be required to file a further registration form prior to
259 the time of renewal.

260 (6) Every broker shall obtain a surety bond issued by
261 a surety company authorized to do business in this state.
262 The amount of the bond shall be ten thousand dollars. The
263 bond shall be in favor of the state of Missouri. Any person
264 damaged by the broker's breach of contract or of any
265 obligation arising therefrom, or by any violation of this
266 section, may bring an action against the bond to recover
267 damages suffered. The aggregate liability of the surety
268 shall be only for actual damages and in no event shall
269 exceed the amount of the bond.

270 (7) Employees regularly employed by a broker who has
271 complied with this subsection shall not be required to file

272 a registration or obtain a surety bond when acting within
273 the scope of their employment for the broker.

274 6. (1) Any person who violates any provision of this
275 section shall be punished by a fine of five hundred dollars
276 per incident, not to exceed twenty thousand dollars for all
277 aggregated violations arising from the use of the
278 transaction documentation or materials found to be in
279 violation of this section. Any person who violates any
280 provision of this section after receiving written notice of
281 a prior violation from the attorney general shall be
282 punished by a fine of one thousand dollars per incident, not
283 to exceed fifty thousand dollars for all aggregated
284 violations arising from the use of the transaction
285 documentation or materials found to be in violation of this
286 section.

287 (2) Violation of any provision of this section shall
288 not affect the enforceability or validity of the underlying
289 agreement.

290 (3) This section shall not create a private right of
291 action against any person or other entity based upon
292 compliance or noncompliance with its provisions.

293 (4) Authority to enforce compliance with this section
294 is vested exclusively in the attorney general of this state.

295 7. The requirements of subsections 3 and 5 of this
296 section shall take effect upon either:

297 (1) Six months after the division of finance finalizes
298 promulgating rules, if the division intends to promulgate
299 rules; or

300 (2) February 28, 2025, if the division does not intend
301 to promulgate rules.

302 8. The division of finance may promulgate rules
303 implementing this section. If the division of finance

304 intends to promulgate rules, it shall declare its intent to
305 do so no later than February 28, 2025. Any rule or portion
306 of a rule, as that term is defined in section 536.010, that
307 is created under the authority delegated in this section
308 shall become effective only if it complies with and is
309 subject to all of the provisions of chapter 536 and, if
310 applicable, section 536.028. This section and chapter 536
311 are nonseverable and if any of the powers vested with the
312 general assembly pursuant to chapter 536 to review, to delay
313 the effective date, or to disapprove and annul a rule are
314 subsequently held unconstitutional, then the grant of
315 rulemaking authority and any rule proposed or adopted after
316 August 28, 2024, shall be invalid and void.

✓