

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 963

AN ACT

To amend chapter 427, RSMo, by adding thereto one new section relating to the disclosure of information pertaining to certain commercial financing products, 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 one new section, to be known as section 427.300, to read as follows:

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

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

(1) "Accounts receivable purchase transaction", any transaction in which the business forwards or otherwise sells to the provider all or a portion of the business's accounts or payment intangibles at a discount to their expected value;

(2) "Broker", any person who, for compensation or the expectation of compensation, obtains a commercial financing product or an offer for a commercial financing product from a third party for a business located in this state;

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

(4) "Business purpose transaction", any transaction where the proceeds are provided to a business or are intended to be used to carry on a business and not for personal, family, or household purposes. For purposes of

determining whether a transaction is a business purpose transaction, the provider may rely on any written statement of intended purpose signed by the business. The statement may be a separate statement or may be contained in an application, agreement, or other document signed by the business or the business owner or owners;

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

(6) "Commercial loan", a loan to a business, whether secured or unsecured;

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

(a) The provider reasonably contemplates repeat transactions; and

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

(8) "Depository institution", any of the following:

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

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

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

(9) "Provider", a person who consummates more than five commercial financing products to a business located in this state in any calendar year. "Provider" also includes a person that enters into a written agreement with a depository institution to arrange for the extension of a commercial financing product by the depository institution to a business via an online lending platform administered by the person. The fact that a provider extends a specific offer for a commercial financing product on behalf of a depository institution shall not be construed to mean that the provider engaged in lending or financing or originated that loan or financing.

3. (1) A provider that consummates a commercial financing product shall disclose the terms of the commercial financing product as required by this section. The disclosures shall be provided at or before consummation of the transaction and, in the case of a commercial open-end credit plan, the disclosures shall also be provided for any disbursement of funds after consummation within fifteen days following the last day of the month in which the disbursement of funds occurred under the commercial open-end credit plan.

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

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

(b) The total amount of funds disbursed to the business under the terms of the commercial financing product, if less than the total amount of funds provided, as a result of any fees deducted or withheld at disbursement and any amount paid to a third party on behalf of the

business. This disclosure shall be labeled "Total Amount of Funds Disbursed";

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

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

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

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

(g) A statement of whether the provider will pay compensation directly to a broker in connection with the commercial financing product and the amount of compensation.

4. This section shall not apply to the following:

(1) A provider that is a depository institution;

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

(3) A commercial financing product secured by real property;

(4) A commercial financing product in which the recipient is a motor vehicle dealer or an affiliate of such a dealer, or a vehicle rental company, or an affiliate of such a company, pursuant to a commercial loan or commercial open-end credit plan of at least fifty thousand dollars or a commercial financing product offered by a person in connection with the sale of products or services that such person manufactures, licenses, or distributes, or whose parent company or any of its owned and controlled subsidiaries manufactures, licenses or distributes;

(5) A commercial financing product that is a factoring transaction, purchase, sale, advance, or similar of accounts receivables owed to a health care provider because of a patient's personal injury treated by the health care provider;

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

(7) A provider that consummates no more than five commercial financing products in this state in a twelve-month period.

5. (1) Any person who violates any provision of this section shall be punished by a fine of five hundred dollars per incident, not to exceed twenty thousand dollars for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation of this section. Any person who violates any provision of this section after receiving written notice of a prior violation from the attorney general shall be punished by a fine of one thousand dollars per incident, not

to exceed fifty thousand dollars for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation of this section.

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

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

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