

# SENATE COMMERCE COMMITTEE

## STATEMENT TO

### **SENATE, No. 1397**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: OCTOBER 10, 2024

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 1397.

As amended, this bill requires certain providers of commercial financing to provide disclosures to recipients.

Under the bill, “provider” is defined to mean a person who extends a specific offer of commercial financing to a recipient and includes a person, including a broker, who solicits and presents specific offers of commercial financing on behalf of a third party. “Commercial financing” is defined to mean open-end financing, closed-end financing, sales-based financing, factoring transaction, or any other form of financing, the proceeds of which the recipient does not intend to use primarily for personal, family, or household purposes.

The bill requires a provider to, at the time of extending a specific offer of commercial financing that is a sales-based, closed-end, or open-end financing, or a factoring transaction, make certain disclosures to the recipient in a form and manner to be determined by the Commissioner of Banking and Insurance. The required disclosures vary by the type of commercial financing or factoring transaction, and include, but are not limited to:

- (1) the finance charge;
- (2) the estimated annual percentage rate, using the words “annual percentage rate” or the abbreviation “APR,” expressed as a yearly rate, inclusive of any fees and finance charges, and calculated in accordance with section 1026.22 of Subpart C of Regulation Z (12 C.F.R. s.1026.22) of the federal “Truth in Lending Act” (15 U.S.C. s.1601 et seq.) and according to certain tolerances and requirements; or, for factoring transactions and sales-based financing transactions, the estimated yearly total dollar cost;
- (3) the total payment amount;
- (4) a description of all other potential fees and charges; and
- (5) a description of collateral requirements or security interests, if any.

The bill also provides that the commissioner may require by regulation a provider extending a specific offer of commercial financing that is not open-end financing, closed-end financing,

sales-based financing, or a factoring transaction but otherwise meets the definition of commercial financing pursuant the bill to make certain disclosures to the recipient that are delineated in the bill.

Under the bill, in addition to other disclosures required pursuant to the bill, a broker who charges any fees, charges, or commissions that would be paid by the recipient of the financing is to provide, at the time of extending a specific offer for a commercial financing transaction and in a form and manner prescribed by the commissioner, a written disclosure of certain information, in a document separate from the provider's contract with the recipient.

The bill stipulates that regulations issued by the Department of Banking and Insurance pursuant to the bill are required to be, to the extent possible, consistent with and substantially similar to regulations concerning commercial financing disclosures adopted in other states.

A provider or broker that violates any provision of the bill, as determined by the commissioner, is to be liable to a civil penalty of not more than \$2,000 for each violation, or not more than \$10,000 for each willful violation. In addition, upon a finding by the commissioner that a provider or broker has recklessly or willfully violated the provisions of the bill, the commissioner may order additional relief, including, but not limited to, a permanent or preliminary injunction on behalf of any recipient affected by the violation. A recipient or provider that is subject to a violation of the bill may bring an action against the provider or broker and recover a civil penalty if the court finds the provider or broker recklessly or willfully violated the provisions of the bill.

This bill was prefiled for introduction in the 2024-2025 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) require providers of factoring transactions and sales-based financing transactions to disclose to the recipient either the estimated annual percentage rate or the estimated yearly total dollar cost of the transaction;

(2) provide that regulations issued pursuant to the bill be, to the extent possible, consistent with and substantially similar to regulations concerning commercial financing disclosures adopted in other states;

(3) provide that relief may be ordered by the Commissioner of Banking and Insurance upon a finding by the commissioner that the provider or broker acted recklessly or willfully;

(4) provide that a recipient or provider subject to a violation of the bill may recover a civil penalty upon a finding by the court that the

provider or broker recklessly or willfully violated the provisions of the bill;

(5) change the entities subject to the provisions of the bill;

(6) prohibit brokers from charging any fee that is assessed or collected prior to the closing of a commercial financing transaction by a broker; and

(7) prohibit brokers from false, misleading, or deceptive representations, or omitting material facts.