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**S. 1187**

**STATUS INFORMATION**

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Summary: Commercial financing disclosure

**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[03/20/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/1187_20240320.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ENACTING THE “COMMERCIAL FINANCING DISCLOSURE ACT” BY ADDING CHAPTER 79 TO TITLE 39 SO AS TO PROVIDE DEFINITIONS, TO PROVIDE TO WHICH COMMERCIAL FINANCING TRANSACTIONS THE PROVISIONS APPLY, TO PROVIDE FOR WRITTEN DISCLOSURES, TO PROVIDE FOR PROHIBITIONS, AND TO PROVIDE FOR ENFORCEMENT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Commercial Financing Disclosure Act”.

SECTION 2. Title 39 of the S.C. Code is amended by adding:

CHAPTER 79

Commercial Financing Disclosure

 Section 39‑79‑10. As used in this chapter:

 (1) “Accounts receivable purchase transaction” means a transaction in which a business forwards or sells to a person all or a portion of the business’s cash receipts, accounts, or payment intangibles at a discount to the expected value of the cash receipts, accounts, or payment intangibles. As used in this item, the terms “accounts” and “payment intangibles” have the same meanings as provided in section 36‑9‑102. The provider’s characterization of an accounts receivable purchase transaction as a purchase is conclusive that the accounts receivable purchase transaction is not a loan or a transaction for the use, forbearance, or detention of money.

 (2) “Advance fee” means any consideration that is assessed or collected by a broker before the closing of a commercial financing transaction.

 (3) “Broker” means a person who, for compensation or the expectation of compensation, arranges a commercial financing transaction or an offer between a third party and a business in this State which would, if executed, be binding upon that third party. The term excludes a provider and any individual or entity whose compensation is not based or dependent upon the terms of the specific commercial financing transaction obtained or offered.

 (4) “Business” means an individual or a group of individuals, a sole proprietorship, a corporation, a limited liability company, a trust, an estate, a cooperative, an association, or a limited or general partnership engaged in a business activity.

 (5) “Commercial financing facility” means a provider’s plan for purchasing multiple accounts receivable from the recipient over a period of time pursuant to an agreement that sets forth the terms and conditions governing the use of the facility.

 (6) “Commercial financing transaction” means a commercial loan, an accounts receivable purchase transaction, or a commercial open‑end credit plan to the extent the transaction is also a business purpose transaction. As used in this item, the term “business purpose transaction” means a transaction the proceeds of which are provided to a business or are intended to be used to carry on a business and not to be used 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.

 (7) “Commercial loan” means a loan to a business, whether secured or unsecured.

 (8) “Commercial open‑end credit plan” means 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.

 (9) “Depository institution” means a state or national bank, bank holding company, trust company, savings and loan association, savings and loan association holding company, credit union, or wholly owned subsidiary thereof.

 (10) “Provider” means a person who consummates more than five commercial financing transactions with a business located in this State in any calendar year. The term also includes a person who enters into a written agreement with a depository institution to arrange a commercial financing transaction between the depository institution and a business via an online lending platform administered by the person. The fact that a provider extends a specific offer for a commercial financing transaction on behalf of a depository institution may not be construed to mean that the provider engaged in lending or financing or originated that loan or financing.

 Section 39‑79‑20. This chapter applies to any commercial financing transaction consummated after December 31, 2024. This chapter does not apply to:

 (1) a provider that is:

 (a) a federally insured depository institution or an affiliate or holding company of such institution; or

 (b) a subsidiary or service corporation that is owned and controlled by a federally insured depository institution or under common ownership with such institution;

 (2) a provider that is a lender regulated under the Farm Credit Act of 1971, 12 U.S.C. ss. 2001, et seq.;

 (3) a commercial financing transaction that is:

 (a) secured by real property;

 (b) a lease; or

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

 (4) a commercial financing transaction in which the recipient is a motor vehicle dealer, as defined in Section 56‑15‑10, 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 transaction offered by a person in connection with the sale or lease of products or services that such person manufactures, licenses, or distributes, or whose parent company or any of its directly or indirectly owned and controlled subsidiaries manufactures, licenses, or distributes;

 (5) a provider that is licensed to engage in the business of money transmission under Article 2, Chapter 11, Title 35 or is licensed as a money transmitter by any other state, district, territory, or commonwealth of the United States;

 (6) a provider that consummates no more than five commercial financing transactions in this State in a twelve‑month period; or

 (7) a commercial financing transaction of more than five hundred thousand dollars.

 Section 39‑79‑30. (A) A provider that consummates a commercial financing transaction shall provide a written disclosure of the terms of the commercial financing transaction as required by subsection (B). The disclosure must be provided at or before consummation of the transaction. Only one disclosure must be provided for each commercial financing transaction, and a disclosure is not required as a result of a modification, forbearance, or change to a consummated commercial financing transaction.

 (B) A provider shall provide a written disclosure of the following information in connection with each commercial financing transaction:

 (1) the total amount of funds provided to the business under the terms of the agreement;

 (2) the total amount of funds disbursed to the business if less than the amount specified in item (1) as a result of any fees deducted or withheld at disbursement, any amount paid to the provider to satisfy a prior balance, and any amount paid to a third party on behalf of the business;

 (3) the total amount to be paid to the provider under the terms of the agreement;

 (4) the total dollar cost under the terms of the agreement, calculated by finding the difference between the amount specified in item (1) and the amount specified in item (3);

 (5)(a) the manner, frequency, and amount of each payment; or

 (b) if the amount of the payments may vary, the manner and frequency of the payments, the estimated amount of the initial payment, a description of the methodology for calculating any variable payment, and the circumstances under which payments may vary; and

 (6) whether there are any costs or discounts associated with prepayment, including a reference to the provision in the agreement which creates the contractual rights of the parties related to prepayment.

 (C) A provider that consummates a commercial financing facility may provide disclosures required by subsection (B) which are based on an example of a transaction that could occur under the agreement. The example must be based on an account receivable total face amount owed of ten thousand dollars. Only one disclosure is required for each commercial financing facility, and a disclosure is not required as result of a modification, forbearance, or change to the facility. A new disclosure is not required each time accounts receivable are purchased under the facility.

 Section 39‑79‑40. A broker may not:

 (1) assess, collect, or solicit an advance fee from a business to provide services as a broker. However, this subsection does not preclude a broker from soliciting a business to pay for, or preclude a business from paying for, actual services necessary to apply for a commercial financing transaction including, but not limited to, a credit check or an appraisal of security, if such payment is made by check or money order payable to a party independent of the broker;

 (2) make or use any false or misleading representation or omit any material fact in the offer or sale of the services of a broker or engage, directly or indirectly, in any act that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a broker, notwithstanding the absence of reliance by the business; or

 (3) make or use any false or deceptive representation in its business dealings.

 Section 39‑79‑50. (A) The Attorney General has exclusive authority to enforce this chapter. The Attorney General may:

 (1) receive and act on complaints;

 (2) take action designed to obtain voluntary compliance with this chapter; or

 (3) commence administrative or judicial proceedings to enforce compliance with this chapter.

 (B)(1) A violation of this chapter is punishable by a fine of five hundred dollars for each 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 chapter.

 (2) A violation of this chapter after receipt of a written notice of a prior violation from the Attorney General is punishable by a fine of one thousand dollars for each 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 chapter.

 (3) A violation of this chapter does not affect the enforceability or validity of the underlying commercial financing transaction.

 (C) This chapter does not create a private right of action against any person or entity based upon compliance or noncompliance with this chapter.

SECTION 3. This act takes effect on January 1, 2025.

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