



General Assembly

Amendment

January Session, 2023

LCO No. 8691



Offered by:

SEN. MILLER P., 27th Dist.
REP. DOUCETTE, 13th Dist.
SEN. BERTHEL, 32nd Dist.
REP. DELNICKI, 14th Dist.

To: Subst. Senate Bill No. 1032

File No. 196

Cal. No. 136

(As Amended)

"AN ACT REQUIRING CERTAIN FINANCING DISCLOSURES."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective July 1, 2024*) As used in this section and
4 sections 2 to 12, inclusive, of this act:

5 (1) "Commercial financing" means any extension of sales-based
6 financing by a provider in an amount not exceeding two hundred fifty
7 thousand dollars, the proceeds of which the recipient does not intend to
8 use primarily for personal, family or household purposes;

9 (2) "Commercial financing broker" means a person, other than a
10 financier, who, for compensation or the expectation of compensation,
11 offers, or offers to obtain, commercial financing for a recipient from a

12 provider that is not exempt;

13 (3) "Finance charge" means the cost of financing expressed as a dollar
14 amount, including (A) any charge payable directly or indirectly by the
15 recipient and imposed directly or indirectly by the provider as an
16 incident to, or a condition of, the extension of financing, and (B) all
17 charges that would be included under the definition of "finance charge"
18 in 12 CFR 1026.4, as amended from time to time, as if the transaction
19 were subject to said section;

20 (4) "Financer" means a person who provides, or will provide,
21 commercial financing to a recipient;

22 (5) "Person" means an individual, corporation, partnership, limited
23 liability company, joint venture, association, joint stock company, trust
24 or unincorporated organization, including, but not limited to, a sole
25 proprietorship;

26 (6) "Provider" means a person who extends a specific offer of
27 commercial financing to a recipient and includes, unless otherwise
28 exempt under this section, a commercial financing broker, but does not
29 include any (A) bank, out-of-state bank, bank holding company,
30 Connecticut credit union, federal credit union, out-of-state credit union
31 or any subsidiary or affiliate of the foregoing, as those terms are defined
32 in section 36a-2 of the general statutes, (B) person acting in such person's
33 capacity as a technology services provider to an entity exempt under
34 this section for use as part of the exempt entity's commercial financing
35 program, provided such person has no interest, arrangement or
36 agreement to purchase any interest in the commercial financing
37 extended by the exempt entity in connection with such program, (C)
38 lender regulated under the federal Farm Credit Act, 12 USC 2001 et seq.,
39 as amended from time to time, (D) person or provider who extends or
40 brokers a commercial financing transaction secured by real property, (E)
41 person or provider who extends or brokers a lease, as defined in section
42 42a-2A-102 of the general statutes, (F) person or provider who extends
43 or brokers a purchase-money obligation, as defined in section 42a-9-

44 103a of the general statutes, (G) person or provider who extends not
45 more than five commercial financing transactions in this state in a
46 twelve-month period, (H) person or provider who extends or brokers a
47 commercial financing transaction entered into pursuant to a commercial
48 financing agreement or commercial open-end credit plan of at least fifty
49 thousand dollars, in which the recipient is (i) a dealer, as defined in
50 section 14-1 of the general statutes, or an affiliate of such a dealer, or (ii)
51 a motor vehicle rental company, or an affiliate of such a company, or (I)
52 person or provider who extends or brokers a commercial financing
53 transaction in connection with the sale of products or services that such
54 person or provider manufactures, licenses or distributes, or whose
55 parent company, subsidiary or affiliate manufactures, licenses or
56 distributes;

57 (7) "Recipient" means a person, or the authorized representative of a
58 person, who applies for commercial financing and is made a specific
59 offer of commercial financing by a provider, but does not include a
60 person acting as a commercial financing broker;

61 (8) "Sales-based financing" means a transaction that is repaid by the
62 recipient to the provider over time (A) as a percentage of sales or
63 revenue, in which the payment amount may increase or decrease
64 according to the volume of sales made or revenue received by the
65 recipient, or (B) according to a fixed payment mechanism that provides
66 for a reconciliation process that adjusts the payment to an amount that
67 is a percentage of sales or revenue; and

68 (9) "Specific offer" means the specific terms of commercial financing,
69 including, but not limited to, a price or amount, that is quoted to a
70 recipient based on information obtained from or about the recipient,
71 which, if accepted by the recipient, would be binding on the provider,
72 subject to any specific requirements stated in such terms.

73 Sec. 2. (NEW) (*Effective July 1, 2024*) For purposes of determining
74 whether financing is commercial financing, a provider may rely on any
75 statement of intended purpose made by the recipient. The statement

76 may be (1) a separate statement signed by the recipient, (2) contained in
77 the financing application, financing agreement or other document
78 signed or consented to by the recipient, or (3) provided orally by the
79 recipient if such oral statement is documented in the recipient's
80 application file by the provider. Electronic signatures and consents are
81 valid for purposes of this section. A provider shall not be required to
82 ascertain that the proceeds of commercial financing are used in
83 accordance with the recipient's statement of intended purpose.

84 Sec. 3. (NEW) (*Effective July 1, 2024*) A provider shall provide to a
85 recipient, when the provider extends a specific offer for sales-based
86 financing, the following disclosures in a format prescribed by the
87 Banking Commissioner:

88 (1) The total amount of the commercial financing.

89 (2) The disbursement amount, which is the amount paid to the
90 recipient or on the recipient's behalf, excluding any finance charges that
91 are deducted or withheld at disbursement.

92 (3) The finance charge.

93 (4) The total repayment amount, which is the disbursement amount
94 plus the finance charge.

95 (5) The estimated time period required for the periodic payments to
96 equal the total repayment amount.

97 (6) The payment amounts as follows:

98 (A) For payment amounts that are fixed, the payment amounts and
99 frequency; or

100 (B) For payment amounts that are variable, a payment schedule or a
101 description of the method used to calculate the amounts and frequency
102 of payments, and the amount of the average projected payments per
103 month.

104 (7) A description of all other potential fees and charges not included
105 in the finance charge, including, but not limited to, draw fees, late
106 payment fees and returned payment fees.

107 (8) (A) Any finance charge the recipient will be required to pay if the
108 recipient elects to pay off or refinance the commercial financing prior to
109 full repayment, other than interest accrued since the recipient's last
110 payment, and the percentage of any unpaid portion of such finance
111 charge and the maximum dollar amount of such finance charge the
112 recipient will be required to pay; and

113 (B) Any additional fees, not already included in the finance charge,
114 the recipient will be required to pay if the recipient elects to pay off or
115 refinance the commercial financing prior to full repayment.

116 (9) A description of collateral requirements or security interests, if
117 any.

118 (10) Whether, in connection with the specific offer of sales-based
119 financing, the provider will pay compensation directly to a commercial
120 financing broker out of the financed amount and, if so, the amount of
121 such compensation.

122 Sec. 4. (NEW) (*Effective July 1, 2024*) If as a condition of obtaining
123 commercial financing the provider requires the recipient to pay off the
124 balance of existing commercial financing from the same provider, the
125 provider shall disclose to the recipient:

126 (1) The amount of the new commercial financing used to pay off the
127 portion of the existing commercial financing that consists of prepayment
128 charges required to be paid and any unpaid interest expense that was
129 not forgiven at the time of renewal. For financing for which the total
130 repayment amount is calculated as a fixed amount, the prepayment
131 charge is equal to the original finance charge multiplied by the amount
132 of the renewal used to pay off existing financing as a percentage of the
133 total repayment amount, minus any portion of the total repayment
134 amount forgiven by the provider at the time of prepayment.

135 (2) If the disbursement amount will be reduced to pay down any
136 unpaid portion of the outstanding balance, the actual dollar amount by
137 which such disbursement amount will be reduced.

138 Sec. 5. (NEW) (*Effective July 1, 2024*) The provider shall obtain the
139 recipient's signature, which may be fulfilled by an electronic signature,
140 on all disclosures required to be presented to the recipient pursuant to
141 sections 1 to 6, inclusive, of this act before authorizing the recipient to
142 proceed further with the commercial financing transaction application.

143 Sec. 6. (NEW) (*Effective July 1, 2024*) Nothing in this section or sections
144 1 to 5, inclusive, of this act shall prevent a provider from providing or
145 disclosing additional information concerning commercial financing
146 offered to a recipient, provided such additional information shall not be
147 disclosed as part of any disclosure required pursuant to this section or
148 sections 1 to 5, inclusive, of this act.

149 Sec. 7. (NEW) (*Effective July 1, 2024*) If the Banking Commissioner
150 determines that the laws of another state require commercial financing
151 disclosures that meet or exceed the commercial financing disclosure
152 requirements established under sections 1 to 6, inclusive, of this act, any
153 commercial financing disclosure form that such other state approves for
154 the purposes of complying with such other state's commercial financing
155 disclosure laws may be used for the purposes of complying with the
156 commercial financing disclosure requirements established under
157 sections 1 to 6, inclusive, of this act.

158 Sec. 8. (NEW) (*Effective July 1, 2024*) No commercial financing contract
159 entered into on or after July 1, 2024, shall contain any provision waiving
160 a recipient's right to notice, judicial hearing or prior court order under
161 chapter 903a of the general statutes in connection with the provider
162 obtaining any prejudgment remedy, including, but not limited to,
163 attachment, execution, garnishment or replevin, upon commencing any
164 litigation against the recipient. Any such provision in a commercial
165 financing contract entered into on or after July 1, 2024, shall be
166 unenforceable.

167 Sec. 9. (NEW) (*Effective July 1, 2024*) (a) A provider shall not revoke,
168 withdraw or modify a specific offer made on or after July 1, 2024, until
169 midnight of the third calendar day after the date of the specific offer. A
170 specific offer may be revoked, withdrawn or modified (1) based on
171 information obtained in the underwriting process, including, but not
172 limited to, verification of any information provided by the recipient, or
173 (2) at the request of the recipient.

174 (b) A specific offer may state that it is based on the provider's
175 preliminary review of application information only and is not a final
176 approval or commitment to provide sales-based financing.

177 Sec. 10. (NEW) (*Effective July 1, 2024*) (a) Not later than October 1,
178 2024, each provider and commercial financing broker shall: (1) Register
179 with the Banking Commissioner in a manner prescribed by the
180 commissioner; and (2) unless such provider or broker is organized
181 under the laws of this state or is otherwise not required to obtain
182 authority to transact business in this state as a foreign entity, shall obtain
183 authority to transact business in this state.

184 (b) An application for registration by a provider or commercial
185 financing broker shall disclose any judgment, memorandum of
186 understanding, cease and desist order or conviction that involves a
187 crime or an act of fraud, breach of trust or money laundering with
188 respect to such provider or broker or any officer, director, manager,
189 operator or individual who otherwise controls the operations of such
190 provider or broker.

191 (c) Each provider and commercial financing broker shall pay an
192 initial registration fee of one thousand dollars and an annual
193 registration fee of five hundred dollars by the fifteenth of September
194 each year thereafter. If a provider or commercial financing broker fails
195 to timely pay any such annual registration fee, its registration shall
196 automatically expire by operation of law.

197 Sec. 11. (NEW) (*Effective July 1, 2024*) The Banking Commissioner may
198 adopt regulations, in accordance with the provisions of chapter 54 of the

199 general statutes, to carry out the provisions of sections 1 to 12, inclusive,
200 of this act.

201 Sec. 12. (NEW) (*Effective July 1, 2024*) (a) Any provider who violates
202 any provision of sections 1 to 10, inclusive, of this act or any regulation
203 adopted pursuant to section 11 of this act shall be liable for a civil
204 penalty pursuant to section 36a-50 of the general statutes.

205 (b) In addition to any civil penalty imposed under subsection (a) of
206 this section, if the Banking Commissioner finds that a provider has
207 knowingly violated any provision of sections 1 to 10, inclusive, of this
208 act or any regulation adopted pursuant to section 11 of this act, the
209 commissioner may seek an injunction in a court of competent
210 jurisdiction, and may exercise the powers granted to the commissioner
211 under section 36a-50 of the general statutes, on behalf of any recipient
212 affected by the violation."

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>July 1, 2024</i>	New section
Sec. 2	<i>July 1, 2024</i>	New section
Sec. 3	<i>July 1, 2024</i>	New section
Sec. 4	<i>July 1, 2024</i>	New section
Sec. 5	<i>July 1, 2024</i>	New section
Sec. 6	<i>July 1, 2024</i>	New section
Sec. 7	<i>July 1, 2024</i>	New section
Sec. 8	<i>July 1, 2024</i>	New section
Sec. 9	<i>July 1, 2024</i>	New section
Sec. 10	<i>July 1, 2024</i>	New section
Sec. 11	<i>July 1, 2024</i>	New section
Sec. 12	<i>July 1, 2024</i>	New section