

HOUSE BILL 574

I1

4lr2570
CF SB 509

By: **Delegate Fraser–Hidalgo**

Introduced and read first time: January 24, 2024

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Financing – Small Business Truth in Lending Act**

3 FOR the purpose of regulating commercial financing transactions, including by
4 establishing requirements related to disclosures, calculations of annual percentage
5 rates, terms of repayments, and other related items, and the extension of specific
6 offers; and generally relating to commercial financing transactions.

7 BY adding to

8 Article – Financial Institutions

9 Section 12–1201 through 12–1214 to be under the new subtitle “Subtitle 12.
10 Commercial Financing”

11 Annotated Code of Maryland

12 (2020 Replacement Volume and 2023 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
14 That the Laws of Maryland read as follows:

15 **Article – Financial Institutions**

16 **SUBTITLE 12. COMMERCIAL FINANCING.**

17 **12–1201.**

18 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
19 **INDICATED.**

20 **(B) (1) “CLOSED–END FINANCING” MEANS A CLOSED–END EXTENSION OF**
21 **CREDIT, SECURED OR UNSECURED, INCLUDING EQUIPMENT FINANCING, THAT:**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (I) DOES NOT MEET THE DEFINITION OF A LEASE UNDER
2 ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE; AND

3 (II) THE PROCEEDS OF WHICH A RECIPIENT DOES NOT INTEND
4 TO USE PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

5 (2) "CLOSED-END FINANCING" INCLUDES FINANCING THAT HAS AN
6 ESTABLISHED PRINCIPAL AMOUNT AND DURATION.

7 (C) "COMMERCIAL FINANCING" MEANS OPEN-END FINANCING,
8 CLOSED-END FINANCING, SALES-BASED FINANCING, A FACTORING TRANSACTION,
9 OR ANOTHER FORM OF FINANCING, THE PROCEEDS OF WHICH THE RECIPIENT DOES
10 NOT INTEND TO USE PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD
11 PURPOSES.

12 (D) "FACTORING TRANSACTION" MEANS AN ACCOUNTS RECEIVABLE
13 PURCHASE TRANSACTION:

14 (1) THAT INCLUDES AN AGREEMENT TO PURCHASE, TRANSFER, OR
15 SELL A LEGALLY ENFORCEABLE CLAIM FOR PAYMENT HELD BY A RECIPIENT FOR
16 GOODS THE RECIPIENT HAS SUPPLIED OR SERVICES THE RECIPIENT HAS RENDERED
17 THAT HAVE BEEN ORDERED BUT FOR WHICH PAYMENT HAS NOT BEEN MADE; AND

18 (2) THE PROCEEDS OF WHICH THE RECIPIENT DOES NOT INTEND TO
19 USE PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

20 (E) (1) "FINANCE CHARGE" MEANS THE COST OF COMMERCIAL
21 FINANCING REPRESENTED AS A DOLLAR AMOUNT.

22 (2) "FINANCE CHARGE" INCLUDES:

23 (I) A CHARGE PAYABLE DIRECTLY OR INDIRECTLY BY A
24 RECIPIENT AND IMPOSED DIRECTLY OR INDIRECTLY BY A PROVIDER AS AN
25 INCIDENT TO OR A CONDITION OF THE EXTENSION OF COMMERCIAL FINANCING;

26 (II) A CHARGE THAT WOULD BE INCLUDED UNDER 12 C.F.R. §
27 1026.4 IF A TRANSACTION WERE SUBJECT TO 12 C.F.R. § 1026.4; AND

28 (III) ANY ADDITIONAL CHARGES DETERMINED BY THE
29 COMMISSIONER.

30 (F) (1) "OPEN-END FINANCING" MEANS AN AGREEMENT FOR ONE OR
31 MORE EXTENSIONS OF SECURED OR UNSECURED OPEN-END CREDIT, THE

1 PROCEEDS OF WHICH A RECIPIENT DOES NOT INTEND TO USE PRIMARILY FOR
2 PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

3 (2) "OPEN-END FINANCING" INCLUDES CREDIT EXTENDED BY A
4 PROVIDER UNDER A PLAN IN WHICH:

5 (I) THE PROVIDER REASONABLY CONTEMPLATES REPEATED
6 TRANSACTIONS;

7 (II) THE PROVIDER MAY IMPOSE A FINANCE CHARGE ON AN
8 OUTSTANDING UNPAID BALANCE; AND

9 (III) THE AMOUNT OF CREDIT THAT MAY BE EXTENDED TO A
10 RECIPIENT DURING THE TERM OF THE PLAN, UP TO A LIMIT THAT THE PROVIDER
11 SETS, IS GENERALLY MADE AVAILABLE TO THE EXTENT THAT ANY OUTSTANDING
12 BALANCE IS REPAYED.

13 (G) (1) "PROVIDER" MEANS A PERSON THAT EXTENDS A SPECIFIC OFFER
14 OF COMMERCIAL FINANCING TO A RECIPIENT.

15 (2) "PROVIDER" INCLUDES A PERSON THAT SOLICITS AND PRESENTS
16 A SPECIFIC OFFER OF COMMERCIAL FINANCING ON BEHALF OF A THIRD PARTY.

17 (H) (1) "RECIPIENT" MEANS A PERSON, OR THE PERSON'S AUTHORIZED
18 REPRESENTATIVE, THAT APPLIES FOR COMMERCIAL FINANCING AND IS MADE A
19 SPECIFIC OFFER OF COMMERCIAL FINANCING BY A PROVIDER.

20 (2) "RECIPIENT" DOES NOT INCLUDE A PERSON ACTING AS A
21 BROKER.

22 (I) (1) "SALES-BASED FINANCING" MEANS A TRANSACTION:

23 (I) THAT IS REPAYED BY A RECIPIENT TO A PROVIDER OVER TIME
24 AS A PERCENTAGE OF SALES OR REVENUE, IN WHICH THE PAYMENT AMOUNT MAY
25 INCREASE OR DECREASE ACCORDING TO THE VOLUME OF SALES MADE OR REVENUE
26 RECEIVED BY THE RECIPIENT; AND

27 (II) THE PROCEEDS OF WHICH THE RECIPIENT DOES NOT
28 INTEND TO USE PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

29 (2) "SALES-BASED FINANCING" INCLUDES A TRANSACTION
30 CONTAINING A TRUE-UP MECHANISM UNDER WHICH THE FINANCING IS REPAYED AS
31 A FIXED PAYMENT BUT PROVIDES FOR A RECONCILIATION PROCESS THAT ADJUSTS
32 THE PAYMENT TO AN AMOUNT THAT IS A PERCENTAGE OF SALES OR REVENUE.

1 1. A DEALER, OR AN AFFILIATE OF A DEALER, AS
2 DEFINED IN § 11-111 OF THE TRANSPORTATION ARTICLE; OR

3 2. A RENTAL VEHICLE COMPANY, OR AN AFFILIATE OF A
4 RENTAL VEHICLE COMPANY, AS DEFINED IN § 18-108 OF THE TRANSPORTATION
5 ARTICLE; AND

6 (ii) MADE UNDER A COMMERCIAL FINANCING AGREEMENT OR
7 COMMERCIAL OPEN-END CREDIT PLAN OF AT LEAST \$50,000, INCLUDING A
8 COMMERCIAL LOAN MADE IN ACCORDANCE WITH THE COMMERCIAL FINANCING
9 TRANSACTION; OR

10 (9) A COMMERCIAL FINANCING TRANSACTION THAT IS A FACTORING
11 TRANSACTION, AN ADVANCE, OR A SIMILAR TRANSACTION OF ACCOUNTS
12 RECEIVABLE OWED TO A HEALTH CARE PROVIDER BECAUSE OF A PATIENT'S
13 PERSONAL INJURY TREATED BY THE HEALTH CARE PROVIDER.

14 12-1203.

15 (A) EXCEPT AS PROVIDED IN § 12-1207 OF THIS SUBTITLE, FOR PURPOSES
16 OF THIS SUBTITLE, AN ANNUAL PERCENTAGE RATE SHALL BE:

17 (1) EXPRESSED AS A YEARLY RATE, INCLUDING ALL FEES AND
18 FINANCE CHARGES; AND

19 (2) CALCULATED IN ACCORDANCE WITH THE FEDERAL TRUTH IN
20 LENDING ACT.

21 (B) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (A)(2) OF THIS
22 SECTION, AN ANNUAL PERCENTAGE RATE SHALL BE CALCULATED BASED ON THE
23 ESTIMATED TERM OF REPAYMENT AND THE PROJECTED PERIODIC PAYMENT
24 AMOUNTS OF A COMMERCIAL FINANCING TRANSACTION, REGARDLESS OF WHETHER
25 FEDERAL LAW OR REGULATION WOULD REQUIRE AN ANNUAL PERCENTAGE RATE TO
26 BE CALCULATED FOR A CERTAIN TRANSACTION.

27 (C) THIS SECTION MAY NOT BE CONSTRUED TO IMPOSE ANY LIABILITY ON A
28 PROVIDER THAT CHARGES AN ANNUAL PERCENTAGE RATE THAT DIFFERS FROM THE
29 ESTIMATED ANNUAL PERCENTAGE RATE DISCLOSED BY THE PROVIDER IN
30 ACCORDANCE WITH THIS SUBTITLE OR ANY REGULATION ADOPTED UNDER THIS
31 SUBTITLE.

32 12-1204.

1 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
2 **INDICATED.**

3 **(2) “ESTIMATED TERM OF REPAYMENT” MEANS THE AMOUNT OF**
4 **TIME REQUIRED FOR THE PERIODIC PAYMENTS MADE BY A RECIPIENT IN A**
5 **SALES–BASED FINANCING TRANSACTION TO EQUAL THE TOTAL AMOUNT REQUIRED**
6 **TO BE REPAYED.**

7 **(3) “TOTAL REPAYMENT AMOUNT” MEANS THE DISBURSEMENT**
8 **AMOUNT OF A SALES–BASED FINANCING TRANSACTION PLUS THE FINANCE CHARGE.**

9 **(B) (1) A PROVIDER SHALL DISCLOSE THE FOLLOWING INFORMATION TO**
10 **A RECIPIENT WHEN EXTENDING A SPECIFIC OFFER OF SALES–BASED FINANCING:**

11 **(I) THE TOTAL AMOUNT OF THE SALES–BASED FINANCING AND**
12 **THE DISBURSEMENT AMOUNT, IF DIFFERENT FROM THE FINANCING AMOUNT,**
13 **MINUS ANY FEES DEDUCTED OR WITHHELD AT DISBURSEMENT;**

14 **(II) THE FINANCE CHARGE;**

15 **(III) THE ESTIMATED ANNUAL PERCENTAGE RATE OF THE**
16 **SALES–BASED FINANCING, USING THE WORDS “ANNUAL PERCENTAGE RATE” OR THE**
17 **ABBREVIATION “APR”;**

18 **(IV) THE TOTAL REPAYMENT AMOUNT;**

19 **(V) THE ESTIMATED TERM OF REPAYMENT;**

20 **(VI) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE**
21 **PROJECTED PERIODIC PAYMENT AMOUNTS;**

22 **(VII) A DESCRIPTION OF ANY OTHER POTENTIAL FEES AND**
23 **CHARGES NOT INCLUDED IN THE FINANCE CHARGE, INCLUDING DRAW FEES, LATE**
24 **PAYMENT FEES, AND RETURNED PAYMENT FEES; AND**

25 **(VIII) IF APPLICABLE, A DESCRIPTION OF COLLATERAL**
26 **REQUIREMENTS OR SECURITY INTERESTS.**

27 **(2) (I) FOR PAYMENT AMOUNTS THAT ARE FIXED, A PROVIDER**
28 **SHALL DISCLOSE:**

29 **1. THE PAYMENT AMOUNTS AND FREQUENCY; AND**

1 **2. IF THE PAYMENT FREQUENCY IS OTHER THAN**
2 **MONTHLY, THE AMOUNT OF THE AVERAGE PROJECTED PAYMENTS PER MONTH.**

3 **(II) FOR PAYMENT AMOUNTS THAT ARE VARIABLE, A PROVIDER**
4 **SHALL DISCLOSE:**

5 **1. THE PAYMENT SCHEDULE OR A DESCRIPTION OF THE**
6 **METHOD USED TO CALCULATE THE AMOUNTS AND FREQUENCY OF PAYMENTS; AND**

7 **2. THE AMOUNT OF THE AVERAGE PROJECTED**
8 **PAYMENTS PER MONTH.**

9 **(C) (1) IF A RECIPIENT PAYS OFF OR REFINANCES THE SALES-BASED**
10 **FINANCING BEFORE THE END OF THE SCHEDULED REPAYMENT PERIOD, A**
11 **PROVIDER SHALL DISCLOSE WHETHER THE RECIPIENT WOULD BE REQUIRED TO**
12 **PAY:**

13 **(I) ANY FINANCE CHARGES OTHER THAN THE INTEREST**
14 **ACCRUED SINCE THE RECIPIENT'S LAST PAYMENT; AND**

15 **(II) ANY ADDITIONAL FEES NOT INCLUDED IN THE FINANCE**
16 **CHARGE.**

17 **(2) IF A RECIPIENT WOULD BE REQUIRED TO PAY ADDITIONAL**
18 **FINANCE CHARGES OTHER THAN THE INTEREST ACCRUED SINCE THE RECIPIENT'S**
19 **LAST PAYMENT, A PROVIDER SHALL DISCLOSE THE PERCENTAGE OF ANY UNPAID**
20 **PORTION OF THE FINANCE CHARGE AND THE MAXIMUM DOLLAR AMOUNT THE**
21 **RECIPIENT COULD BE REQUIRED TO PAY.**

22 **12-1205.**

23 **(A) (1) A PROVIDER SHALL USE THE PROJECTED SALES VOLUME OF A**
24 **RECIPIENT TO CALCULATE THE FOLLOWING INFORMATION RELATED TO A**
25 **SALES-BASED FINANCING TRANSACTION:**

26 **(I) THE ESTIMATED TERM OF REPAYMENT AND THE**
27 **PROJECTED PAYMENT AMOUNTS OF A SALES-BASED FINANCING TRANSACTION; AND**

28 **(II) THE ESTIMATED ANNUAL PERCENTAGE RATE OF A**
29 **SALES-BASED FINANCING TRANSACTION.**

30 **(2) THE ESTIMATED ANNUAL PERCENTAGE RATE OF A SALES-BASED**
31 **FINANCING TRANSACTION SHALL BE CALCULATED:**

1 (I) IN ACCORDANCE WITH THE FEDERAL TRUTH IN LENDING
2 ACT AND REGULATION Z, 12 C.F.R. § 1026.22; AND

3 (II) BASED ON THE ESTIMATED TERM OF REPAYMENT AND
4 PROJECTED SALES VOLUME OF A RECIPIENT.

5 (B) (1) A PROVIDER MAY CALCULATE THE PROJECTED SALES VOLUME OF
6 A RECIPIENT USING EITHER THE HISTORICAL METHOD OR THE OPT-IN METHOD.

7 (2) (I) A PROVIDER THAT USES THE HISTORICAL METHOD TO
8 CALCULATE THE PROJECTED SALES VOLUME OF A RECIPIENT SHALL USE AN
9 AVERAGE HISTORICAL VOLUME OF SALES OR REVENUE.

10 (II) A PROVIDER SHALL FIX THE HISTORICAL TIME PERIOD
11 USED TO CALCULATE THE AVERAGE HISTORICAL VOLUME AND USE THE SAME TIME
12 PERIOD FOR ALL DISCLOSURE PURPOSES FOR ANY SALES-BASED FINANCING
13 TRANSACTION PRODUCTS OFFERED.

14 (III) EXCEPT AS PROVIDED IN SUBPARAGRAPH (IV) OF THIS
15 PARAGRAPH, THE FIXED HISTORICAL TIME PERIOD:

16 1. MAY NOT BE LESS THAN 1 MONTH AND MAY NOT
17 EXCEED 12 MONTHS; AND

18 2. SHALL BE THE TIME PERIOD DIRECTLY BEFORE THE
19 SPECIFIC OFFER WAS MADE.

20 (IV) A PROVIDER MAY CHOOSE TO USE THE AVERAGE SALES FOR
21 THE SAME NUMBER OF MONTHS AS THE PROVIDER WOULD HAVE USED UNDER
22 SUBPARAGRAPH (III) OF THIS PARAGRAPH WITH THE HIGHEST SALES VOLUME
23 WITHIN THE PAST 12 MONTHS.

24 (3) A PROVIDER MAY USE THE OPT-IN METHOD TO DETERMINE THE
25 INFORMATION LISTED UNDER SUBSECTION (A)(1) OF THIS SECTION BY USING A
26 PROJECTED SALES VOLUME THAT THE PROVIDER CHOOSES FOR EACH DISCLOSURE
27 IF THE RECIPIENT PARTICIPATES IN A REVIEW PROCESS ESTABLISHED BY THE
28 COMMISSIONER.

29 (C) A PROVIDER SHALL NOTIFY THE COMMISSIONER WHICH OF THE TWO
30 METHODS THE PROVIDER INTENDS TO USE WHEN CALCULATING THE ESTIMATED
31 ANNUAL PERCENTAGE OF EACH SALES-BASED FINANCING TRANSACTION.

32 (D) (1) ON OR BEFORE JANUARY 1 EACH YEAR, A PROVIDER SHALL
33 REPORT TO THE COMMISSIONER ON:

1 **(I) THE ESTIMATED ANNUAL PERCENTAGE RATES GIVEN TO**
2 **EACH RECIPIENT; AND**

3 **(II) THE ACTUAL ANNUAL PERCENTAGE RATES OF EACH**
4 **COMPLETED SALES-BASED FINANCING TRANSACTION.**

5 **(2) (I) THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS**
6 **SUBSECTION SHALL CONTAIN ANY INFORMATION THE COMMISSIONER CONSIDERS**
7 **NECESSARY TO DETERMINE WHETHER THE DEVIATION BETWEEN THE ESTIMATED**
8 **ANNUAL PERCENTAGE RATES AND ACTUAL ANNUAL PERCENTAGE RATES OF**
9 **COMPLETED SALES-BASED FINANCING TRANSACTIONS IS REASONABLE.**

10 **(II) THE COMMISSIONER MAY CONSIDER EXTRAORDINARY**
11 **CIRCUMSTANCES WHEN DETERMINING WHETHER THE PROVIDER'S DEVIATION**
12 **BETWEEN THE ESTIMATED ANNUAL PERCENTAGE RATE AND ACTUAL ANNUAL**
13 **PERCENTAGE RATE OF A SALES-BASED FINANCING TRANSACTION IS REASONABLE.**

14 **(III) IF THE COMMISSIONER FINDS THAT THERE WAS AN**
15 **UNREASONABLE DEVIATION BETWEEN ESTIMATED AND ACTUAL ANNUAL**
16 **PERCENTAGE RATES OF SALES-BASED FINANCING TRANSACTIONS, THE**
17 **COMMISSIONER MAY REQUIRE THE PROVIDER TO USE THE HISTORICAL METHOD**
18 **INSTEAD OF THE OPT-IN METHOD IN DETERMINING THE PROJECTED SALES VOLUME**
19 **OF THE RECIPIENT.**

20 **12-1206.**

21 **(A) IN THIS SECTION, "TOTAL REPAYMENT AMOUNT" MEANS THE**
22 **DISBURSEMENT AMOUNT OF A CLOSED-END FINANCING TRANSACTION PLUS THE**
23 **FINANCE CHARGE.**

24 **(B) (1) A PROVIDER SHALL DISCLOSE THE FOLLOWING INFORMATION TO**
25 **A RECIPIENT WHEN EXTENDING A SPECIFIC OFFER FOR CLOSED-END FINANCING:**

26 **(I) THE TOTAL AMOUNT OF THE CLOSED-END FINANCING AND**
27 **THE DISBURSEMENT AMOUNT, IF DIFFERENT FROM THE FINANCING AMOUNT,**
28 **MINUS ANY FEES DEDUCTED OR WITHHELD AT DISBURSEMENT;**

29 **(II) THE TOTAL REPAYMENT AMOUNT;**

30 **(III) THE FINANCE CHARGE;**

1 **(IV) THE ANNUAL PERCENTAGE RATE OF THE CLOSED-END**
2 **FINANCING, USING THE WORDS “ANNUAL PERCENTAGE RATE” OR THE**
3 **ABBREVIATION “APR”;**

4 **(V) THE TERM OF THE FINANCING;**

5 **(VI) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE**
6 **PROJECTED PERIODIC PAYMENT AMOUNTS;**

7 **(VII) A DESCRIPTION OF ANY OTHER POTENTIAL FEES AND**
8 **CHARGES NOT INCLUDED IN THE FINANCE CHARGE, INCLUDING DRAW FEES, LATE**
9 **PAYMENT FEES, AND RETURNED PAYMENT FEES; AND**

10 **(VIII) IF APPLICABLE, A DESCRIPTION OF COLLATERAL**
11 **REQUIREMENTS OR SECURITY INTERESTS.**

12 **(2) (I) FOR PAYMENT AMOUNTS THAT ARE FIXED, A PROVIDER**
13 **SHALL DISCLOSE:**

14 **1. THE PAYMENT AMOUNTS AND FREQUENCY; AND**

15 **2. IF THE PAYMENT FREQUENCY IS OTHER THAN**
16 **MONTHLY, THE AMOUNT OF THE AVERAGE PROJECTED PAYMENTS PER MONTH.**

17 **(II) FOR PAYMENT AMOUNTS THAT ARE VARIABLE, A PROVIDER**
18 **SHALL DISCLOSE:**

19 **1. THE PAYMENT SCHEDULE OR A DESCRIPTION OF THE**
20 **METHOD USED TO CALCULATE THE AMOUNTS AND FREQUENCY OF PAYMENTS; AND**

21 **2. THE AMOUNT OF THE AVERAGE PROJECTED**
22 **PAYMENTS PER MONTH.**

23 **(3) THE ANNUAL PERCENTAGE RATE REQUIRED TO BE DISCLOSED**
24 **UNDER PARAGRAPH (1)(IV) OF THIS SUBSECTION SHALL BE:**

25 **(I) EXPRESSED AS A YEARLY RATE, INCLUSIVE OF ANY FEES**
26 **AND FINANCE CHARGES THAT CANNOT BE AVOIDED BY A RECIPIENT; AND**

27 **(II) CALCULATED IN ACCORDANCE WITH THE FEDERAL TRUTH**
28 **IN LENDING ACT AND REGULATION Z, 12 C.F.R. § 1026.22, REGARDLESS OF**
29 **WHETHER FEDERAL LAW OR REGULATION WOULD REQUIRE THE CALCULATION.**

1 (IV) THE ANNUAL PERCENTAGE RATE OF THE COMMERCIAL
2 FINANCING, USING THE WORDS "ANNUAL PERCENTAGE RATE" OR THE
3 ABBREVIATION "APR";

4 (V) THE TERM OF THE PLAN, IF APPLICABLE, OR THE PERIOD
5 OVER WHICH A DRAW IS AMORTIZED;

6 (VI) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE
7 PAYMENT FREQUENCY AND AMOUNTS;

8 (VII) A DESCRIPTION OF ANY OTHER POTENTIAL FEES AND
9 CHARGES NOT INCLUDED IN THE FINANCE CHARGE, INCLUDING DRAW FEES, LATE
10 PAYMENT FEES, AND RETURNED PAYMENT FEES; AND

11 (VIII) IF APPLICABLE, A DESCRIPTION OF COLLATERAL
12 REQUIREMENTS OR SECURITY INTERESTS.

13 (2) (I) FOR PAYMENT AMOUNTS THAT ARE FIXED, A PROVIDER
14 SHALL DISCLOSE:

15 1. THE PAYMENT AMOUNTS AND FREQUENCY; AND

16 2. IF THE PAYMENT FREQUENCY IS OTHER THAN
17 MONTHLY, THE AMOUNT OF THE AVERAGE PROJECTED PAYMENTS PER MONTH.

18 (II) FOR PAYMENT AMOUNTS THAT ARE VARIABLE, A PROVIDER
19 SHALL DISCLOSE:

20 1. THE PAYMENT SCHEDULE OR A DESCRIPTION OF THE
21 METHOD USED TO CALCULATE THE AMOUNTS AND FREQUENCY OF PAYMENTS; AND

22 2. THE AMOUNT OF THE AVERAGE PROJECTED
23 PAYMENTS PER MONTH.

24 (3) THE ANNUAL PERCENTAGE RATE REQUIRED TO BE DISCLOSED
25 UNDER PARAGRAPH (1)(IV) OF THIS SUBSECTION SHALL BE:

26 (I) EXPRESSED AS A NOMINAL YEARLY RATE, INCLUSIVE OF
27 ANY FEES AND FINANCE CHARGES THAT CANNOT BE AVOIDED BY A RECIPIENT;

28 (II) CALCULATED IN ACCORDANCE WITH THE FEDERAL TRUTH
29 IN LENDING ACT AND REGULATION Z, 12 C.F.R. § 1026.22; AND

1 **(III) BASED ON THE MAXIMUM AMOUNT OF CREDIT AVAILABLE**
2 **TO THE RECIPIENT AND THE TERM RESULTING FROM MAKING THE MINIMUM**
3 **REQUIRED PAYMENTS AS DISCLOSED, REGARDLESS OF WHETHER FEDERAL LAW OR**
4 **REGULATION WOULD REQUIRE THE CALCULATION.**

5 **(D) (1) IF A RECIPIENT PAYS OFF OR REFINANCES THE OPEN-END**
6 **FINANCING BEFORE THE END OF THE SCHEDULED REPAYMENT PERIOD, A**
7 **PROVIDER SHALL DISCLOSE WHETHER THE RECIPIENT WOULD BE REQUIRED TO**
8 **PAY:**

9 **(I) ANY FINANCE CHARGES OTHER THAN THE INTEREST**
10 **ACCRUED SINCE THE RECIPIENT'S LAST PAYMENT; AND**

11 **(II) ANY ADDITIONAL FEES NOT INCLUDED IN THE FINANCE**
12 **CHARGE.**

13 **(2) IF A RECIPIENT WOULD BE REQUIRED TO PAY ADDITIONAL**
14 **FINANCE CHARGES OTHER THAN THE INTEREST ACCRUED SINCE THE RECIPIENT'S**
15 **LAST PAYMENT, A PROVIDER SHALL DISCLOSE THE PERCENTAGE OF ANY UNPAID**
16 **PORTION OF THE FINANCE CHARGE AND MAXIMUM DOLLAR AMOUNT THE**
17 **RECIPIENT COULD BE REQUIRED TO PAY.**

18 **12-1208.**

19 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
20 **INDICATED.**

21 **(2) "FINANCE CHARGE" INCLUDES A DISCOUNT TAKEN ON THE FACE**
22 **VALUE OF THE ACCOUNTS RECEIVABLE.**

23 **(3) "TOTAL PAYMENT AMOUNT" MEANS THE PURCHASE AMOUNT OF**
24 **THE FACTORING TRANSACTION PLUS THE FINANCE CHARGE.**

25 **(B) A PROVIDER SHALL DISCLOSE THE FOLLOWING INFORMATION TO A**
26 **RECIPIENT WHEN EXTENDING A SPECIFIC OFFER FOR A FACTORING TRANSACTION:**

27 **(1) THE AMOUNT OF THE RECEIVABLES PURCHASE PRICE PAID TO**
28 **THE RECIPIENT AND, IF DIFFERENT FROM THE PURCHASE PRICE, THE**
29 **DISBURSEMENT AMOUNT AFTER ANY FEES DEDUCTED OR WITHHELD AT**
30 **DISBURSEMENT;**

31 **(2) THE TOTAL PAYMENT AMOUNT;**

32 **(3) THE FINANCE CHARGE;**

1 (4) THE ANNUAL PERCENTAGE RATE OF THE FACTORING
2 TRANSACTION, USING THE WORDS “ANNUAL PERCENTAGE RATE” OR THE
3 ABBREVIATION “APR”, CALCULATED ACCORDING TO THE FEDERAL TRUTH IN
4 LENDING ACT AND REGULATION Z, 12 C.F.R. § 1026, APPENDIX J, AS A “SINGLE
5 ADVANCE, SINGLE PAYMENT TRANSACTION”;

6 (5) A DESCRIPTION OF ANY OTHER POTENTIAL FEES AND CHARGES
7 THAT CAN BE AVOIDED BY THE RECIPIENT; AND

8 (6) A DESCRIPTION OF THE RECEIVABLES PURCHASED AND, IF
9 APPLICABLE, ANY ADDITIONAL COLLATERAL REQUIREMENTS OR SECURITY
10 INTERESTS.

11 (c) (1) FOR PURPOSES OF THIS SUBSECTION, THE ANNUAL PERCENTAGE
12 RATE SHALL BE CALCULATED ACCORDING TO THE FEDERAL TRUTH IN LENDING
13 ACT AND REGULATION Z, 12 C.F.R. § 1026, APPENDIX J, AS A “SINGLE ADVANCE,
14 SINGLE PAYMENT TRANSACTION”, REGARDLESS OF WHETHER FEDERAL LAW OR
15 REGULATION WOULD REQUIRE AN ANNUAL PERCENTAGE RATE TO BE CALCULATED
16 FOR A CERTAIN TRANSACTION.

17 (2) (i) SUBJECT TO SUBPARAGRAPH (ii) OF THIS PARAGRAPH, A
18 PROVIDER SHALL USE THE FOLLOWING INFORMATION TO CALCULATE THE
19 ESTIMATED ANNUAL PERCENTAGE RATE IN ACCORDANCE WITH THIS SECTION:

20 1. THE PURCHASE AMOUNT IS THE FINANCING AMOUNT;

21 2. THE PAYMENT AMOUNT IS THE PURCHASE AMOUNT
22 MINUS THE FINANCE CHARGE; AND

23 3. THE TERM OF THE FACTORING TRANSACTION IS
24 DETERMINED BY THE PAYMENT DUE DATE OF THE RECEIVABLES.

25 (ii) A PROVIDER MAY ESTIMATE THE TERM FOR A FACTORING
26 TRANSACTION AS THE AVERAGE PAYMENT PERIOD, USING HISTORICAL DATA OVER
27 A PERIOD NOT TO EXCEED THE PREVIOUS 12 MONTHS, CONCERNING PAYMENT
28 INVOICES PAID BY THE PARTY OWING THE ACCOUNTS RECEIVABLE IN QUESTION.

29 12-1209.

30 (A) IN THIS SECTION, “TOTAL REPAYMENT AMOUNT” MEANS THE
31 DISBURSEMENT AMOUNT OF A COMMERCIAL FINANCING TRANSACTION PLUS THE
32 FINANCE CHARGE.

1 **(B) A PROVIDER MAY EXTEND A SPECIFIC OFFER OF COMMERCIAL**
2 **FINANCING THAT IS NOT AN OPEN-END FINANCING, A CLOSED-END FINANCING, A**
3 **SALES-BASED FINANCING, OR A FACTORING TRANSACTION BUT OTHERWISE MEETS**
4 **THE DEFINITION OF COMMERCIAL FINANCING UNDER THIS SUBTITLE.**

5 **(C) (1) IF A PROVIDER EXTENDS A SPECIFIC OFFER THAT IS NOT AN**
6 **OPEN-END FINANCING, A CLOSED-END FINANCING, A SALES-BASED FINANCING, OR**
7 **A FACTORING TRANSACTION BUT OTHERWISE MEETS THE DEFINITION OF**
8 **COMMERCIAL FINANCING UNDER THIS SUBTITLE, THE PROVIDER SHALL DISCLOSE:**

9 **(I) THE TOTAL AMOUNT OF THE COMMERCIAL FINANCING**
10 **INCLUDING THE DISBURSEMENT AMOUNT, IF DIFFERENT FROM THE FINANCING**
11 **AMOUNT, MINUS ANY FEES DEDUCTED OR WITHHELD AT DISBURSEMENT;**

12 **(II) THE TOTAL REPAYMENT AMOUNT;**

13 **(III) THE FINANCE CHARGE;**

14 **(IV) THE ANNUAL PERCENTAGE RATE OF THE COMMERCIAL**
15 **FINANCING, USING THE WORDS "ANNUAL PERCENTAGE RATE" OR THE**
16 **ABBREVIATION "APR", EXPRESSED AS A YEARLY RATE, INCLUSIVE OF ANY FEES**
17 **AND FINANCE CHARGES, AND CALCULATED IN ACCORDANCE WITH THE RELEVANT**
18 **SECTIONS OF THE FEDERAL TRUTH IN LENDING ACT, REGULATION Z, 12 C.F.R. §**
19 **1026.22, OR THIS ARTICLE, REGARDLESS OF WHETHER FEDERAL LAW, THE**
20 **REGULATION, OR THIS ARTICLE WOULD REQUIRE THE CALCULATION;**

21 **(V) THE TERM OF THE COMMERCIAL FINANCING;**

22 **(VI) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE**
23 **PAYMENT FREQUENCY AND AMOUNTS;**

24 **(VII) A DESCRIPTION OF ANY OTHER POTENTIAL FEES AND**
25 **CHARGES NOT INCLUDED IN THE FINANCE CHARGE, INCLUDING LATE PAYMENT**
26 **FEES AND RETURNED PAYMENT FEES; AND**

27 **(VIII) IF APPLICABLE, A DESCRIPTION OF COLLATERAL**
28 **REQUIREMENTS OR SECURITY INTERESTS.**

29 **(2) (I) FOR PAYMENT AMOUNTS THAT ARE FIXED, A PROVIDER**
30 **SHALL DISCLOSE:**

31 **1. THE PAYMENT AMOUNTS AND FREQUENCY; AND**

1 **2. IF THE PAYMENT FREQUENCY IS OTHER THAN**
2 **MONTHLY, THE AMOUNT OF THE AVERAGE PROJECTED PAYMENTS PER MONTH.**

3 **(II) FOR PAYMENT AMOUNTS THAT ARE VARIABLE, A PROVIDER**
4 **SHALL DISCLOSE:**

5 **1. THE PAYMENT SCHEDULE OR A DESCRIPTION OF THE**
6 **METHOD USED TO CALCULATE THE AMOUNTS AND FREQUENCY OF PAYMENTS; AND**

7 **2. THE AMOUNT OF THE AVERAGE PROJECTED**
8 **PAYMENTS PER MONTH.**

9 **(D) (1) IF A RECIPIENT PAYS OFF OR REFINANCES THE COMMERCIAL**
10 **FINANCING BEFORE THE END OF THE SCHEDULED REPAYMENT PERIOD, A**
11 **PROVIDER SHALL DISCLOSE WHETHER THE RECIPIENT WOULD BE REQUIRED TO**
12 **PAY:**

13 **(I) ANY FINANCE CHARGES OTHER THAN THE INTEREST**
14 **ACCRUED SINCE THE RECIPIENT'S LAST PAYMENT; AND**

15 **(II) ANY ADDITIONAL FEES NOT INCLUDED IN THE FINANCE**
16 **CHARGE.**

17 **(2) IF A RECIPIENT WOULD BE REQUIRED TO PAY ADDITIONAL**
18 **FINANCE CHARGES OTHER THAN THE INTEREST ACCRUED SINCE THE RECIPIENT'S**
19 **LAST PAYMENT, A PROVIDER SHALL DISCLOSE THE PERCENTAGE OF ANY UNPAID**
20 **PORTION OF THE FINANCE CHARGE AND MAXIMUM DOLLAR AMOUNT THE**
21 **RECIPIENT COULD BE REQUIRED TO PAY.**

22 **12-1210.**

23 **(A) A PROVIDER MAY REQUIRE A RECIPIENT TO PAY OFF THE BALANCE OF**
24 **AN EXISTING COMMERCIAL FINANCING TRANSACTION FROM THE SAME PROVIDER**
25 **AS A CONDITION OF OBTAINING A NEW OR RENEWAL COMMERCIAL FINANCING**
26 **TRANSACTION.**

27 **(B) IF A PROVIDER REQUIRES A RECIPIENT TO PAY OFF A COMMERCIAL**
28 **FINANCING TRANSACTION BEFORE OBTAINING A NEW OR RENEWAL COMMERCIAL**
29 **FINANCING TRANSACTION, THE PROVIDER SHALL DISCLOSE:**

30 **(1) THE AMOUNT OF THE NEW OR RENEWAL COMMERCIAL FINANCING**
31 **THAT WILL BE USED TO PAY OFF THE PORTION OF THE EXISTING COMMERCIAL**
32 **FINANCING THAT CONSISTS OF ANY REQUIRED PREPAYMENT CHARGES; AND**

1 **(2) ANY UNPAID INTEREST THAT WAS NOT FORGIVEN AT THE TIME**
2 **THE NEW OR RENEWAL COMMERCIAL FINANCING WAS ENTERED INTO.**

3 **(C) (1) FOR FINANCING FOR WHICH THE TOTAL REPAYMENT AMOUNT IS**
4 **CALCULATED AS A FIXED AMOUNT, THE PREPAYMENT CHARGE IS EQUAL TO THE**
5 **ORIGINAL FINANCE CHARGE MULTIPLIED BY THE AMOUNT OF THE NEW OR**
6 **RENEWAL COMMERCIAL FINANCING USED TO PAY OFF THE EXISTING COMMERCIAL**
7 **FINANCING TRANSACTION AS A PERCENTAGE OF THE TOTAL REPAYMENT AMOUNT,**
8 **MINUS ANY PORTION OF THE TOTAL REPAYMENT AMOUNT FORGIVEN BY THE**
9 **PROVIDER AT THE TIME OF PREPAYMENT.**

10 **(2) IF THE PREPAYMENT CHARGE IS MORE THAN ZERO, THE**
11 **PROVIDER SHALL RECORD THE AMOUNT AS THE ANSWER TO THE FOLLOWING**
12 **QUESTION:**

13 **“DOES THE NEW OR RENEWAL COMMERCIAL FINANCING TRANSACTION INCLUDE**
14 **ANY AMOUNT THAT IS USED TO PAY UNPAID FINANCE CHARGES OR FEES, ALSO**
15 **KNOWN AS DOUBLE DIPPING? YES, (ENTER AMOUNT)”.**

16 **(D) IF THE DISBURSEMENT AMOUNT OF THE NEW OR RENEWAL**
17 **COMMERCIAL FINANCING TRANSACTION WILL BE REDUCED TO PAY DOWN ANY**
18 **UNPAID PORTION OF THE OUTSTANDING BALANCE OF THE EXISTING COMMERCIAL**
19 **FINANCING, THE PROVIDER SHALL DISCLOSE THE ACTUAL DOLLAR AMOUNT BY**
20 **WHICH THE DISBURSEMENT AMOUNT WILL BE REDUCED.**

21 **12-1211.**

22 **A RECIPIENT SHALL SIGN, MANUALLY OR ELECTRONICALLY, EACH**
23 **APPLICABLE DISCLOSURE REQUIRED UNDER THIS SUBTITLE BEFORE A PROVIDER**
24 **MAY ALLOW THE RECIPIENT TO PROCEED WITH THE COMMERCIAL FINANCING**
25 **APPLICATION.**

26 **12-1212.**

27 **(A) (1) NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO PREVENT A**
28 **PROVIDER FROM DISCLOSING ADDITIONAL INFORMATION TO A RECIPIENT**
29 **REGARDING A COMMERCIAL FINANCING TRANSACTION.**

30 **(2) IF A PROVIDER PROVIDES AN ADDITIONAL DISCLOSURE TO A**
31 **RECIPIENT OTHER THAN WHAT IS REQUIRED BY THIS SUBTITLE, THE ADDITIONAL**
32 **DISCLOSURE IS NOT CONSIDERED A REQUIRED DISCLOSURE UNDER THIS SUBTITLE.**

33 **(B) (1) IF ADDITIONAL METRICS OF FINANCING COSTS ARE DISCLOSED**
34 **OR USED IN THE APPLICATION PROCESS FOR COMMERCIAL FINANCING, THE**

1 ADDITIONAL METRICS MAY NOT BE PRESENTED AS A RATE IF THEY ARE NOT THE
2 ANNUAL INTEREST RATE OR THE ANNUAL PERCENTAGE RATE.

3 (2) THE TERM “INTEREST”, WHEN USED TO DESCRIBE A PERCENTAGE
4 RATE, MAY BE USED ONLY TO DESCRIBE ANNUAL PERCENTAGE RATES, INCLUDING
5 THE ANNUAL INTEREST RATE.

6 (C) IF A PROVIDER STATES A RATE OF FINANCE CHARGE OR A FINANCING
7 AMOUNT TO A RECIPIENT DURING THE APPLICATION PROCESS FOR COMMERCIAL
8 FINANCING, THE PROVIDER SHALL ALSO STATE THE RATE AS AN “ANNUAL
9 PERCENTAGE RATE”, USING THAT TERM OR THE ABBREVIATION “APR”.

10 12-1213.

11 (A) TO CARRY OUT THIS SUBTITLE, THE COMMISSIONER SHALL ADOPT
12 REGULATIONS SUBSTANTIALLY THE SAME AS REGULATIONS ADOPTED BY THE NEW
13 YORK STATE DEPARTMENT OF FINANCIAL SERVICES REGARDING COMMERCIAL
14 FINANCING.

15 (B) THE COMMISSIONER SHALL APPROVE THE USE OF COMMERCIAL
16 FINANCING DISCLOSURE FORMS APPROVED FOR USE IN OTHER STATES WITH
17 COMMERCIAL FINANCING DISCLOSURE REQUIREMENTS THAT ARE SUBSTANTIALLY
18 SIMILAR TO OR EXCEED THE REQUIREMENTS OF THIS SUBTITLE.

19 12-1214.

20 (A) (1) THE COMMISSIONER SHALL IMPOSE A CIVIL PENALTY NOT
21 EXCEEDING:

22 (I) \$2,000 FOR EACH VIOLATION OF THIS SUBTITLE; AND

23 (II) \$10,000 FOR EACH WILLFUL VIOLATION OF THIS SUBTITLE.

24 (2) THE COMMISSIONER MAY ORDER ADDITIONAL RELIEF,
25 INCLUDING RESTITUTION OR A PERMANENT OR PRELIMINARY INJUNCTION ON
26 BEHALF OF A RECIPIENT AFFECTED BY A VIOLATION OF THIS SUBTITLE.

27 (B) IF A COMPLAINT ABOUT A VIOLATION OF THIS SUBTITLE IS FILED WITH
28 THE COMMISSIONER, THE COMMISSIONER MAY INVESTIGATE THE COMPLAINT AND
29 USE ANY OF THE INVESTIGATIVE AND ENFORCEMENT POWERS PROVIDED UNDER
30 TITLE 2, SUBTITLE 1 OF THIS ARTICLE.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2024.