

LOANS. Creates the Louisiana Commercial Financing Disclosure Law. (8/1/24)

AN ACT

To enact Chapter 4-C of Code Title VII of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:3138.1 through 3138.6, relative to commercial financing transactions; to require providers of commercial financing transactions to provide written disclosures at consummation; to provide for exemptions; to provide for prohibited acts by brokers of commercial financing transactions; to provide for enforcement and penalties; to provide for definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 4-C of Code Title VII of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:3138.1 through 3138.6, is hereby enacted to read as follows:

CHAPTER 4-C. COMMERCIAL FINANCING DISCLOSURE

§3138.1. Short Title

This Chapter shall be known and may be cited as the "Louisiana Commercial Financing Disclosure Law".

§3138.2. Definitions

As used in this Chapter:

(1) "Accounts receivable purchase transaction" means a transaction in which a business forwards or otherwise sells to a person all or a portion of the business's cash receipts or receivables as defined in R.S. 9:3137.3 at a discount to the expected value of cash receipts or receivables. 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 that 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 account 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 Paragraph, the term "business purpose transaction" means a transaction the proceeds of which are provided to a business or are intended to be used to

1 carry on a business and not to be used for personal, family, or household
2 purposes. For purposes of determining whether a transaction is a business
3 purpose transaction, the provider may rely on any written statement of
4 intended purpose signed by the business. The statement may be a separate
5 statement or may be contained in an application, agreement, or other document
6 signed by the business or the business owner.

7 (7) "Commercial loan" means a loan to a business, whether secured or
8 unsecured.

9 (8) "Commercial open-end credit plan" means commercial financing
10 extended by any provider under a plan in which:

11 (a) The provider reasonably contemplates repeat transactions.

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

15 (9) "Depository institution" means a banking or similar organization
16 organized, certified, and supervised by an agency of either the United States or
17 the state of Louisiana or any other state pursuant to the banking, currency, and
18 related laws of the United States or of the state of Louisiana or any other state,
19 and includes credit unions.

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

29 §3138.3. Scope

1 This Chapter applies to any commercial financing transaction
2 consummated on or after January 1, 2025. This Chapter shall not apply to:

3 (1) A provider who is either:

4 (a) A federally insured depository institution or an affiliate or holding
5 company of the institution.

6 (b) A subsidiary or service corporation that is owned and controlled by
7 a federally insured depository institution or under common ownership with the
8 institution.

9 (2) A provider who is a lender regulated under the Farm Credit Act of
10 1971, 12 U.S.C. §2001 et seq.

11 (3) A commercial financing transaction that is any of the following:

12 (a) Secured by real property.

13 (b) A lease.

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

17 (4) A commercial financing transaction in which the recipient is a dealer
18 licensed pursuant to R.S. 32:781 et seq. or R.S. 32:1251 et seq. or an affiliate of
19 the dealer, or a vehicle lessor or rental company or an affiliate of the company,
20 pursuant to a commercial loan or commercial open-end credit plan of at least
21 fifty thousand dollars or a commercial financing transaction offered by a person
22 in connection with the sale or lease of products or services that the person
23 manufactures, licenses, or distributes, or whose parent company, or any of its
24 directly or indirectly owned and controlled subsidiaries, manufactures, licenses,
25 or distributes.

26 (5) A provider who is licensed to engage in money transmission or the
27 sale of checks pursuant to R.S. 6:1031 et seq. or licensed as a money transmitter
28 by any other state, district, territory, or commonwealth of the United States.

29 (6) A provider that consummates no more than five commercial

financing transactions in this state in a twelve-month period.

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

§3138.4. Disclosures

A. A provider who consummates a commercial financing transaction shall provide a written disclosure of the terms of the commercial financing transaction as required by Subsection B of this Section. The disclosure shall be provided at or before consummation of the transaction. Only one disclosure shall 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 Paragraph (1) of this Subsection 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 Paragraph (1) of this Subsection and the amount specified in Paragraph (3) of this Subsection.

(5) The manner, frequency, and amount of each payment, or 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

1 payments may vary.

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

5 C. A provider who consummates a commercial financing facility may
6 provide disclosures required by Subsection B of this Section that are based on
7 an example of a transaction that may occur under the agreement. The example
8 shall be based on an account receivable total face amount owed of ten thousand
9 dollars. Only one disclosure is required for each commercial financing facility,
10 and a disclosure is not required as a result of a modification, forbearance, or
11 change to the facility. A new disclosure is not required each time accounts
12 receivable are purchased under the facility.

13 §3138.5. Prohibited acts

14 A broker shall not do any of the following:

15 (1) Assess, collect, or solicit an advance fee from a business to provide
16 services as a broker. However, the provisions of this Paragraph shall not
17 preclude a broker from soliciting a business to pay for, or preclude a business
18 from paying for, actual services necessary to apply for a commercial financing
19 transaction, including but not limited to a credit check or an appraisal of
20 security, if the payment is made by check or money order payable to a party
21 independent of the broker.

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

27 (3) Make or use any false or deceptive representation in its business
28 dealings.

29 (4) Offer the services of a broker in any advertisement without disclosing

the actual address and telephone number or without disclosing the actual address and telephone number of the business of the broker and the address and telephone number or any forwarding service the broker may use, if any.

§3138.6. Enforcement

A. The attorney general has exclusive authority to enforce the provisions of this Chapter. The attorney general may:

(1) Receive and act on complaints.

(2) Take action designed to obtain voluntary compliance with this Chapter.

(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 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 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 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 Chapter.

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

C. This Chapter shall not create a private right of action against any person or entity based upon compliance or noncompliance with this Chapter.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Xavier I. Alexander.

DIGEST

SB 335 Engrossed

2024 Regular Session

Coussan

Proposed law defines the terms "accounts receivable purchase transactions", "advance fee", "broker", "business", "commercial financing facility", "commercial financing transaction", "commercial loan", "commercial open-end credit plan", "depository institution", and

"provider".

Proposed law applies to any commercial financing transaction consummated on or after January 1, 2025, and further provides that proposed law does not apply to:

- (1) A provider that is either:
 - (a) A federally insured depository institution or an affiliate or holding company of the institution.
 - (b) A subsidiary or service corporation that is owned or under common ownership with the institution.
- (2) A provider that is a lender regulated under the Farm Credit Act of 1971.
- (3) A commercial financing transaction that is any of the following:
 - (a) Secured by real property.
 - (b) A lease.
 - (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 dealer licensed pursuant to present law or an affiliate of a dealer, or a vehicle lessor or rental company or an affiliate of a company, pursuant to a commercial loan or commercial open-end credit plan of at least \$50,000 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 who is licensed to engage in money transmission or the sale of checks pursuant to present law or licensed as a money transmitter by any other state, district, territory, or commonwealth of the U.S.
- (6) A provider who consummates no more than five commercial financing transactions in this state in a 12-month period.
- (7) A commercial financing transaction of more than \$500,000.

Proposed law requires a provider who consummates a commercial financing transaction to provide a written disclosure of terms of the commercial financing transaction at or before consummation of the transaction. Further provides that only one disclosure must be provided for each commercial financing transaction, and a disclosure is not required as a result of modification, forbearance, or change to a consummated commercial financing transaction.

Proposed law requires a provider to provide a written disclosure in connection with each financial 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 of funds provided to the business, 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 the 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 total amount of funds provided to the business and the total amount to be paid to the provider under the terms of the agreements.
- (5) The manner, frequency, and amount of each payment, or if the amounts 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 payment may vary.
- (6) Any costs or discounts associated with prepayment, including reference to the provision in the agreement which creates a contractual right related to prepayment.

Proposed law provides that a provider who consummates a commercial financing facility may provide disclosures that are based on an example of a transaction that could occur under the agreement.

Proposed law requires only one disclosure for each commercial financing facility, and a disclosure is not required as a result of a modification, forbearance, or change to the facility. Further provides that a new disclosure is not required each time accounts receivable are purchased under the facility.

Proposed law provides that a broker shall not do any of the following:

- (1) Assess, collect, or solicit an advance fee from a business in exchange for services, except to pay for, or preclude a business from paying for actual services necessary to apply for a commercial financing transaction, including 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 of fraud or deception upon any person in connection with the offer or sale of the services of a broker.
- (3) Make or use any false or deceptive representation in its business dealings.
- (4) Offer the services of a broker in any advertisement without disclosing the actual address and telephone number of the broker or any address or telephone number of the forwarding service the broker uses.

Proposed law gives the attorney general exclusive authority to enforce proposed law.

Proposed law provides that a violation under proposed law is punishable by a fine of \$500 per incident, not to exceed \$20,000 for all aggregated violations.

Proposed law provides that a violation under proposed law subsequent to receiving a written notice of a violation from the attorney general is punishable by a fine of \$1,000 per incident, not to exceed \$50,000 for all aggregated violations.

Proposed law provides that a violation under proposed law does not affect the enforceability or validity of the underlying commercial financing transaction.

Proposed law provides for a private right of action against any person or entity based upon compliance or noncompliance of proposed law.

Effective August 1, 2024.

(Adds R.S. 9:3138.1-3138.6)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer
Protection, and International Affairs to the original bill

1. Make technical changes.