

HOUSE BILL 574

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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.



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

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

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

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

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

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

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

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

(2) "FINANCE CHARGE" INCLUDES:

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

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

(III) ANY ADDITIONAL CHARGES DETERMINED BY THE COMMISSIONER.

(F) (1) "OPEN-END FINANCING" MEANS AN AGREEMENT FOR ONE OR 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.

(J) "SPECIFIC OFFER" MEANS THE TERMS OF COMMERCIAL FINANCING THAT ARE QUOTED TO A RECIPIENT, BASED ON INFORMATION OBTAINED FROM OR ABOUT THE RECIPIENT, WHICH IF ACCEPTED BY THE RECIPIENT ARE BINDING ON A PROVIDER, AS APPLICABLE, SUBJECT TO REQUIREMENTS STATED IN THE TERMS OF THE COMMERCIAL FINANCING.

12-1202.

THIS SUBTITLE DOES NOT APPLY TO:

(1) (I) A FEDERAL OR STATE BANK, CREDIT UNION, OR SAVINGS ASSOCIATION; OR

(II) A SUBSIDIARY OR AFFILIATE OF AN ORGANIZATION LISTED IN ITEM (I) OF THIS ITEM;

(2) A PERSON ACTING AS A TECHNOLOGY SERVICES PROVIDER TO AN ENTITY EXEMPT UNDER THIS SECTION FOR USE AS PART OF THE ENTITY'S COMMERCIAL FINANCING PROGRAM IF THE PERSON DOES NOT HAVE AN INTEREST, ARRANGEMENT, OR AGREEMENT TO PURCHASE ANY INTEREST IN THE COMMERCIAL FINANCING EXTENDED BY THE ENTITY IN CONNECTION WITH THE COMMERCIAL FINANCING PROGRAM;

(3) A LENDER REGULATED UNDER THE FEDERAL FARM CREDIT ACT;

(4) A COMMERCIAL FINANCING TRANSACTION SECURED BY REAL PROPERTY;

(5) A LEASE AS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE;

(6) A PROVIDER OR OTHER PERSON WHO MAKES NOT MORE THAN FIVE COMMERCIAL FINANCING TRANSACTIONS IN THE STATE IN A 12-MONTH PERIOD;

(7) A COMMERCIAL FINANCING TRANSACTION MORE THAN \$2,500,000;

(8) A COMMERCIAL FINANCING TRANSACTION:

(I) IN WHICH THE RECIPIENT IS:

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.

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

(2) "ESTIMATED TERM OF REPAYMENT" MEANS THE AMOUNT OF TIME REQUIRED FOR THE PERIODIC PAYMENTS MADE BY A RECIPIENT IN A SALES-BASED FINANCING TRANSACTION TO EQUAL THE TOTAL AMOUNT REQUIRED TO BE REPAYED.

(3) "TOTAL REPAYMENT AMOUNT" MEANS THE DISBURSEMENT AMOUNT OF A SALES-BASED FINANCING TRANSACTION PLUS THE FINANCE CHARGE.

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

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

(II) THE FINANCE CHARGE;

(III) THE ESTIMATED ANNUAL PERCENTAGE RATE OF THE SALES-BASED FINANCING, USING THE WORDS "ANNUAL PERCENTAGE RATE" OR THE ABBREVIATION "APR";

(IV) THE TOTAL REPAYMENT AMOUNT;

(V) THE ESTIMATED TERM OF REPAYMENT;

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

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

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

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

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:**

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

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

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

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

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

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

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

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

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

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

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

(D) (1) ON OR BEFORE JANUARY 1 EACH YEAR, A PROVIDER SHALL 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;**

(IV) THE ANNUAL PERCENTAGE RATE OF THE CLOSED-END FINANCING, USING THE WORDS "ANNUAL PERCENTAGE RATE" OR THE ABBREVIATION "APR";

(V) THE TERM OF THE FINANCING;

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

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

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

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

1. THE PAYMENT AMOUNTS AND FREQUENCY; AND

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

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

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

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

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

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

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

1 (C) (1) IF A RECIPIENT PAYS OFF OR REFINANCES THE CLOSED-END
2 FINANCING BEFORE THE END OF THE SCHEDULED REPAYMENT PERIOD, A
3 PROVIDER SHALL DISCLOSE WHETHER THE RECIPIENT WOULD BE REQUIRED TO
4 PAY:

5 (I) ANY FINANCE CHARGES OTHER THAN THE INTEREST
6 ACCRUED SINCE THE RECIPIENT'S LAST PAYMENT; AND

7 (II) ANY ADDITIONAL FEES NOT INCLUDED IN THE FINANCE
8 CHARGE.

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

14 12-1207.

15 (A) IN THIS SECTION, "TOTAL REPAYMENT AMOUNT" MEANS THE DRAW
16 AMOUNT OF THE OPEN-END FINANCING TRANSACTION, MINUS ANY FEES DEDUCTED
17 OR WITHHELD AT DISBURSEMENT, PLUS THE FINANCE CHARGE.

18 (B) (1) WHEN CALCULATING THE TOTAL REPAYMENT AMOUNT IN
19 ACCORDANCE WITH THIS SECTION, A PROVIDER SHALL ASSUME A DRAW AMOUNT
20 EQUAL TO THE MAXIMUM AMOUNT OF CREDIT AVAILABLE TO THE RECIPIENT IF
21 DRAWN AND HELD FOR THE DURATION OF THE TERM OR DRAW PERIOD.

22 (2) WHEN CALCULATING A FINANCE CHARGE IN ACCORDANCE WITH
23 THIS SECTION, A PROVIDER SHALL ASSUME THE MAXIMUM AMOUNT OF CREDIT
24 AVAILABLE TO THE RECIPIENT, IN EACH CASE, IS DRAWN AND HELD FOR THE
25 DURATION OF THE TERM OF THE DRAW PERIOD.

26 (C) (1) A PROVIDER SHALL DISCLOSE THE FOLLOWING INFORMATION TO
27 A RECIPIENT WHEN EXTENDING A SPECIFIC OFFER FOR OPEN-END FINANCING:

28 (I) THE MAXIMUM AMOUNT OF CREDIT AVAILABLE TO THE
29 RECIPIENT AND THE AMOUNT SCHEDULED TO BE DRAWN BY THE RECIPIENT AT THE
30 TIME THE OFFER IS EXTENDED, IF ANY, MINUS ANY FEES DEDUCTED OR WITHHELD
31 AT DISBURSEMENT;

32 (II) THE FINANCE CHARGE;

33 (III) THE TOTAL REPAYMENT AMOUNT;

(IV) THE ANNUAL PERCENTAGE RATE OF THE COMMERCIAL FINANCING, USING THE WORDS “ANNUAL PERCENTAGE RATE” OR THE ABBREVIATION “APR”;

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

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

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

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

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

1. THE PAYMENT AMOUNTS AND FREQUENCY; AND

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

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

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

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

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

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

(II) CALCULATED IN ACCORDANCE WITH THE FEDERAL TRUTH 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;

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

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

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

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

(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, A PROVIDER SHALL USE THE FOLLOWING INFORMATION TO CALCULATE THE ESTIMATED ANNUAL PERCENTAGE RATE IN ACCORDANCE WITH THIS SECTION:

1. THE PURCHASE AMOUNT IS THE FINANCING AMOUNT;

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

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

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

12–1209.

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

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

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

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

(II) THE TOTAL REPAYMENT AMOUNT;

(III) THE FINANCE CHARGE;

(IV) THE ANNUAL PERCENTAGE RATE OF THE COMMERCIAL FINANCING, 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 THE RELEVANT SECTIONS OF THE FEDERAL TRUTH IN LENDING ACT, REGULATION Z, 12 C.F.R. § 1026.22, OR THIS ARTICLE, REGARDLESS OF WHETHER FEDERAL LAW, THE REGULATION, OR THIS ARTICLE WOULD REQUIRE THE CALCULATION;

(V) THE TERM OF THE COMMERCIAL FINANCING;

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

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

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

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

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.