

SENATE BILL 509

I1
SB 496/23 – FIN

4lr1804
CF HB 574

By: **Senator Kramer**

Introduced and read first time: January 24, 2024

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 17, 2024

CHAPTER _____

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.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



(B) (1) "CLOSED-END FINANCING" MEANS A CLOSED-END EXTENSION OF CREDIT, SECURED OR UNSECURED, INCLUDING EQUIPMENT FINANCING, THAT:

(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.

1 (F) (1) “OPEN-END FINANCING” MEANS AN AGREEMENT FOR ONE OR
2 MORE EXTENSIONS OF SECURED OR UNSECURED OPEN-END CREDIT, THE
3 PROCEEDS OF WHICH A RECIPIENT DOES NOT INTEND TO USE PRIMARILY FOR
4 PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

5 (2) “OPEN-END FINANCING” INCLUDES CREDIT EXTENDED BY A
6 PROVIDER UNDER A PLAN IN WHICH:

7 (I) THE PROVIDER REASONABLY CONTEMPLATES REPEATED
8 TRANSACTIONS;

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

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

15 (G) (1) “PROVIDER” MEANS A PERSON THAT EXTENDS A SPECIFIC OFFER
16 OF COMMERCIAL FINANCING TO A RECIPIENT.

17 (2) “PROVIDER” INCLUDES A PERSON THAT SOLICITS AND PRESENTS
18 A SPECIFIC OFFER OF COMMERCIAL FINANCING ON BEHALF OF A THIRD PARTY.

19 (H) (1) “RECIPIENT” MEANS A PERSON, OR THE PERSON’S AUTHORIZED
20 REPRESENTATIVE, THAT APPLIES FOR COMMERCIAL FINANCING AND IS MADE A
21 SPECIFIC OFFER OF COMMERCIAL FINANCING BY A PROVIDER.

22 (2) “RECIPIENT” DOES NOT INCLUDE A PERSON ACTING AS A
23 BROKER.

24 (I) (1) “SALES-BASED FINANCING” MEANS A TRANSACTION:

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

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

(2) "SALES-BASED FINANCING" INCLUDES A TRANSACTION CONTAINING A TRUE-UP MECHANISM UNDER WHICH THE FINANCING IS REPAYED AS A FIXED PAYMENT BUT PROVIDES FOR A RECONCILIATION PROCESS THAT ADJUSTS 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. A DEALER, OR AN AFFILIATE OF A DEALER, AS DEFINED IN § 11-111 OF THE TRANSPORTATION ARTICLE; OR

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

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

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

(10) A PREMIUM FINANCE AGREEMENT AS DEFINED IN § 23-101 OF THE INSURANCE ARTICLE.

12-1203.

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

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

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

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

(C) THIS SECTION MAY NOT BE CONSTRUED TO IMPOSE ANY LIABILITY ON A PROVIDER THAT CHARGES AN ANNUAL PERCENTAGE RATE THAT DIFFERS FROM THE ESTIMATED ANNUAL PERCENTAGE RATE DISCLOSED BY THE PROVIDER IN

1 ACCORDANCE WITH THIS SUBTITLE OR ANY REGULATION ADOPTED UNDER THIS
2 SUBTITLE.

3 12-1204.

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

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

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

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

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

17 (II) THE FINANCE CHARGE;

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

21 (IV) THE TOTAL REPAYMENT AMOUNT;

22 (V) THE ESTIMATED TERM OF REPAYMENT;

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

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

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

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

3 1. THE PAYMENT AMOUNTS AND FREQUENCY; AND

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

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

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

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

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

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

18 (II) ANY ADDITIONAL FEES NOT INCLUDED IN THE FINANCE
19 CHARGE.

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

25 12-1205.

26 (A) (1) A PROVIDER SHALL USE THE PROJECTED SALES VOLUME OF A
27 RECIPIENT TO CALCULATE THE FOLLOWING INFORMATION RELATED TO A
28 SALES-BASED FINANCING TRANSACTION:

29 (I) THE ESTIMATED TERM OF REPAYMENT AND THE
30 PROJECTED PAYMENT AMOUNTS OF A SALES-BASED FINANCING TRANSACTION; AND

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

(2) THE ESTIMATED ANNUAL PERCENTAGE RATE OF A SALES-BASED 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 RATE OF EACH SALES-BASED FINANCING TRANSACTION.

(D) (1) ON OR BEFORE JANUARY 1 EACH YEAR, A PROVIDER THAT ELECTS TO USE THE OPT-IN METHOD UNDER SUBSECTION (B)(3) OF THIS SECTION SHALL REPORT TO THE COMMISSIONER ON:

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

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

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

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

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

12-1206.

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

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

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

1 (II) THE TOTAL REPAYMENT AMOUNT;

2 (III) THE FINANCE CHARGE;

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

6 (V) THE TERM OF THE FINANCING;

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

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

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

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

16 1. THE PAYMENT AMOUNTS AND FREQUENCY; AND

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

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

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

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

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

27 (I) EXPRESSED AS A YEARLY RATE, INCLUSIVE OF ANY FEES
28 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.

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

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

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

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

12-1207.

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

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

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

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

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

1 (II) THE FINANCE CHARGE;

2 (III) THE TOTAL REPAYMENT AMOUNT;

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

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

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

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

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

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

17 1. THE PAYMENT AMOUNTS AND FREQUENCY; AND

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

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

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

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

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

28 (I) EXPRESSED AS A NOMINAL YEARLY RATE, INCLUSIVE OF
29 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

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

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

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

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

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

12-1208.

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

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

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

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

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

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

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

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

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

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

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

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

22 **1. THE PURCHASE AMOUNT IS THE FINANCING AMOUNT;**

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

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

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

31 **12-1209.**

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

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

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

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

15 (II) THE TOTAL REPAYMENT AMOUNT;

16 (III) THE FINANCE CHARGE;

17 (IV) THE ANNUAL PERCENTAGE RATE OF THE COMMERCIAL
18 FINANCING, USING THE WORDS “ANNUAL PERCENTAGE RATE” OR THE
19 ABBREVIATION “APR”, EXPRESSED AS A YEARLY RATE, INCLUSIVE OF ANY FEES
20 AND FINANCE CHARGES, AND CALCULATED IN ACCORDANCE WITH THE RELEVANT
21 SECTIONS OF THE FEDERAL TRUTH IN LENDING ACT, REGULATION Z, 12 C.F.R. §
22 1026.22, OR THIS ARTICLE, REGARDLESS OF WHETHER FEDERAL LAW, THE
23 REGULATION, OR THIS ARTICLE WOULD REQUIRE THE CALCULATION;

24 (V) THE TERM OF THE COMMERCIAL FINANCING;

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

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

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

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

1 1. THE PAYMENT AMOUNTS AND FREQUENCY; AND

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

4 (ii) FOR PAYMENT AMOUNTS THAT ARE VARIABLE, A PROVIDER
5 SHALL DISCLOSE:

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

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

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

14 (i) ANY FINANCE CHARGES OTHER THAN THE INTEREST
15 ACCRUED SINCE THE RECIPIENT'S LAST PAYMENT; AND

16 (ii) ANY ADDITIONAL FEES NOT INCLUDED IN THE FINANCE
17 CHARGE.

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

23 12-1210.

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

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

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

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

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

13 (2) IF THE PREPAYMENT CHARGE IS MORE THAN ZERO, THE
14 PROVIDER SHALL RECORD THE AMOUNT AS THE ANSWER TO THE FOLLOWING
15 QUESTION:

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

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

24 12-1211.

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

29 12-1212.

30 (A) (1) NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO PREVENT A
31 PROVIDER FROM DISCLOSING ADDITIONAL INFORMATION TO A RECIPIENT
32 REGARDING A COMMERCIAL FINANCING TRANSACTION.

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

(B) (1) IF ADDITIONAL METRICS OF FINANCING COSTS ARE DISCLOSED OR USED IN THE APPLICATION PROCESS FOR COMMERCIAL FINANCING, THE ADDITIONAL METRICS MAY NOT BE PRESENTED AS A RATE IF THEY ARE NOT THE ANNUAL INTEREST RATE OR THE ANNUAL PERCENTAGE RATE.

(2) THE TERM "INTEREST", WHEN USED TO DESCRIBE A PERCENTAGE RATE, MAY BE USED ONLY TO DESCRIBE ANNUAL PERCENTAGE RATES, INCLUDING THE ANNUAL INTEREST RATE.

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

12-1213.

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

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

12-1214.

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

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

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

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.