

SENATE BILL 496

I1
SB 825/22 – FIN

3lr1057

By: **Senator Kramer**

Introduced and read first time: February 3, 2023

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 5, 2023

CHAPTER _____

1 AN ACT concerning

2 ~~Consumer Credit~~ **Commercial Financing Transactions**

3 FOR the purpose of requiring that certain revenue, fees, and examination and investigation
4 fees and assessments relating to commercial financing transactions be credited to
5 the Nondepository Special Fund; regulating commercial financing transactions,
6 including by establishing requirements related to disclosures, calculations of annual
7 percentage rates, terms of repayments, and other related items, and the extension of
8 special offers; and generally relating to commercial financing transactions.

9 BY repealing and reenacting, with amendments,
10 Article – Financial Institutions
11 Section 11–610(a)(13)(i), (b)(1), and (c)
12 Annotated Code of Maryland
13 (2020 Replacement Volume and 2022 Supplement)

14 BY adding to
15 Article – Financial Institutions
16 Section 12–1101 through 12–1114 to be under the new subtitle “Subtitle 11.
17 Commercial Financing”
18 Annotated Code of Maryland
19 (2020 Replacement Volume and 2022 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Financial Institutions
22 Section 12–1102

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.



Annotated Code of Maryland
(2020 Replacement Volume and 2022 Supplement)
(As enacted by Section 1 of this Act)

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

Article – Financial Institutions

11–610.

(a) There is a Nondepository Special Fund that consists of:

(13) (i) Any other fee, examination or investigation fee or assessment, or revenue received by the Commissioner under this subtitle, Subtitles 2, 3, 4, and 5 of this title, Title 12, Subtitles 1, 4, 9, [and] 10, **AND 11** of this article, Title 12, Subtitle 14 of the Commercial Law Article, and Title 14, Subtitles 12 and 19 of the Commercial Law Article; and

(b) Notwithstanding subsection (a) of this section:

(1) The Commissioner shall pay all fines and penalties collected by the Commissioner under Title 2, Subtitle 1 of this article, this subtitle, Subtitles 2, 3, 4, and 5 of this title, Title 12, Subtitles 1, 4, 9, [and] 10, **AND 11** of this article, Title 12, Subtitle 14 of the Commercial Law Article, and Title 14, Subtitles 12 and 19 of the Commercial Law Article into the General Fund of the State; and

(c) The purpose of the Fund is to cover the direct and indirect costs of fulfilling the statutory and regulatory duties of the Commissioner and the State Collection Agency Licensing Board related to:

(1) Title 2, Subtitle 1 of this article;

(2) This subtitle;

(3) Subtitle 2 of this title;

(4) Subtitle 3 of this title;

(5) Subtitle 4 of this title;

(6) Subtitle 5 of this title;

(7) Title 12, Subtitle 1 of this article;

(8) Title 12, Subtitle 4 of this article;

(9) Title 12, Subtitle 9 of this article;

(10) Title 12, Subtitle 10 of this article;

(11) TITLE 12, SUBTITLE 11 OF THIS ARTICLE;

[(11)] (12) Title 7 of the Business Regulation Article;

[(12)] (13) Title 12 of the Commercial Law Article;

[(13)] (14) Title 14, Subtitles 12, 19, and 42 of the Commercial Law Article;

[(14)] (15) Title 7, Subtitles 1, 3, 4, and 5 of the Real Property Article;

[(15)] (16) Title 26, Subtitle 6 of the Education Article; and

[(16)] (17) Any other expense authorized in the State budget.

SUBTITLE 11. COMMERCIAL FINANCING.

12-1101.

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

(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.

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

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

(I) THE PROVIDER REASONABLY CONTEMPLATES REPEATED
TRANSACTIONS;

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

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

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

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

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

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

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

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

(II) THE PROCEEDS OF WHICH THE RECIPIENT DOES NOT 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 REPAID 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.

12-1102.

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.

12-1103.

(A) EXCEPT AS PROVIDED IN § 12-1107 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.

12-1104.

(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

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.

(c) (1) IF A RECIPIENT PAYS OFF OR REFINANCES THE SALES-BASED 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

1 PORTION OF THE FINANCE CHARGE AND THE MAXIMUM DOLLAR AMOUNT THE
2 RECIPIENT COULD BE REQUIRED TO PAY.

3 12-1105.

4 (A) (1) A PROVIDER SHALL USE THE PROJECTED SALES VOLUME OF A
5 RECIPIENT TO CALCULATE THE FOLLOWING INFORMATION RELATED TO A
6 SALES-BASED FINANCING TRANSACTION:

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

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

11 (2) THE ESTIMATED ANNUAL PERCENTAGE RATE OF A SALES-BASED
12 FINANCING TRANSACTION SHALL BE CALCULATED:

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

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

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

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

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

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

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

30 2. SHALL BE THE TIME PERIOD DIRECTLY BEFORE THE
31 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 PARAGRAPH (3) OF THIS SUBSECTION 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.

1 12-1106.

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

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

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

10 (II) THE TOTAL REPAYMENT AMOUNT;

11 (III) THE FINANCE CHARGE;

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

15 (V) THE TERM OF THE FINANCING;

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

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

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

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

25 1. THE PAYMENT AMOUNTS AND FREQUENCY; AND

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

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

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

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

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

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

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

12 (C) (1) IF A RECIPIENT PAYS OFF OR REFINANCES THE CLOSED-END
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 MAXIMUM DOLLAR AMOUNT THE
24 RECIPIENT COULD BE REQUIRED TO PAY.

25 12-1107.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 12-1108.

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

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

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

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

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

11 (2) THE TOTAL PAYMENT AMOUNT;

12 (3) THE FINANCE CHARGE;

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

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

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

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

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

32 1. THE PURCHASE AMOUNT IS THE FINANCING AMOUNT;

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

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

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

9 **12-1109.**

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

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

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

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

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

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

26 **(IV) THE ANNUAL PERCENTAGE RATE OF THE COMMERCIAL**
27 **FINANCING, USING THE WORDS “ANNUAL PERCENTAGE RATE” OR THE**
28 **ABBREVIATION “APR”, EXPRESSED AS A YEARLY RATE, INCLUSIVE OF ANY FEES**
29 **AND FINANCE CHARGES, AND CALCULATED IN ACCORDANCE WITH THE RELEVANT**
30 **SECTIONS OF THE FEDERAL TRUTH IN LENDING ACT, REGULATION Z, 12 C.F.R. §**
31 **1026.22, OR THIS ARTICLE, REGARDLESS OF WHETHER FEDERAL LAW, THE**
32 **REGULATION, OR THIS ARTICLE WOULD REQUIRE THE CALCULATION;**

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

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

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

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

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

10 1. THE PAYMENT AMOUNTS AND FREQUENCY; AND

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

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

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

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

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

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

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

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

1 12-1110.

2 (A) A PROVIDER MAY REQUIRE A RECIPIENT TO PAY OFF THE BALANCE OF
3 AN EXISTING COMMERCIAL FINANCING TRANSACTION FROM THE SAME PROVIDER
4 AS A CONDITION OF OBTAINING A NEW OR RENEWAL COMMERCIAL FINANCING
5 TRANSACTION.

6 (B) IF A PROVIDER REQUIRES A RECIPIENT TO PAY OFF A COMMERCIAL
7 FINANCING TRANSACTION BEFORE OBTAINING A NEW OR RENEWAL COMMERCIAL
8 FINANCING TRANSACTION, THE PROVIDER SHALL DISCLOSE:

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

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

14 (C) (1) FOR FINANCING FOR WHICH THE TOTAL REPAYMENT AMOUNT IS
15 CALCULATED AS A FIXED AMOUNT, THE PREPAYMENT CHARGE IS EQUAL TO THE
16 ORIGINAL FINANCE CHARGE MULTIPLIED BY THE AMOUNT OF THE NEW OR
17 RENEWAL COMMERCIAL FINANCING USED TO PAY OFF THE EXISTING COMMERCIAL
18 FINANCING TRANSACTION AS A PERCENTAGE OF THE TOTAL REPAYMENT AMOUNT,
19 MINUS ANY PORTION OF THE TOTAL REPAYMENT AMOUNT FORGIVEN BY THE
20 PROVIDER AT THE TIME OF PREPAYMENT.

21 (2) IF THE PREPAYMENT CHARGE IS MORE THAN ZERO, THE
22 PROVIDER SHALL RECORD THE AMOUNT AS THE ANSWER TO THE FOLLOWING
23 QUESTION:

24 “DOES THE NEW OR RENEWAL COMMERCIAL FINANCING TRANSACTION INCLUDE
25 ANY AMOUNT THAT IS USED TO PAY UNPAID FINANCE CHARGES OR FEES, ALSO
26 KNOWN AS DOUBLE DIPPING? YES, [ENTER AMOUNT]”.

27 (D) IF THE DISBURSEMENT AMOUNT OF THE NEW OR RENEWAL
28 COMMERCIAL FINANCING TRANSACTION WILL BE REDUCED TO PAY DOWN ANY
29 UNPAID PORTION OF THE OUTSTANDING BALANCE OF THE EXISTING COMMERCIAL
30 FINANCING, THE PROVIDER SHALL DISCLOSE THE ACTUAL DOLLAR AMOUNT BY
31 WHICH THE DISBURSEMENT AMOUNT WILL BE REDUCED.

32 12-1111.

1 A RECIPIENT SHALL SIGN, MANUALLY OR ELECTRONICALLY, EACH
2 APPLICABLE DISCLOSURE REQUIRED UNDER THIS SUBTITLE BEFORE A PROVIDER
3 MAY ALLOW THE RECIPIENT TO PROCEED WITH THE COMMERCIAL FINANCING
4 APPLICATION.

5 12-1112.

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

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

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

16 (2) THE TERM “INTEREST”, WHEN USED TO DESCRIBE A PERCENTAGE
17 RATE, MAY BE USED ONLY TO DESCRIBE ANNUAL PERCENTAGE RATES, INCLUDING
18 THE ANNUAL INTEREST RATE.

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

23 12-1113.

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

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

32 12-1114.

(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.

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

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Financial Institutions

12–1102.

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;

(10) AN ENTITY PRINCIPALLY ENGAGED IN THE BUSINESS OF MAKING COMMERCIAL FINANCING PRODUCTS IN CONNECTION WITH THE PURCHASE OR LEASE OF PRODUCTS MANUFACTURED OR DISTRIBUTED BY ITS DIRECT OR INDIRECT PARENT COMPANY OR ANY DIRECT OR INDIRECT SUBSIDIARY OF THE PARENT COMPANY; OR

(11) A PURCHASE–MONEY OBLIGATION AS DEFINED IN § 9–103 OF THE UNIFORM COMMERCIAL CODE.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) Section 2 of this Act is contingent on the adoption of regulations by the New York State Department of Financial Services exempting from the New York Commercial Financing Disclosure Law:

(1) an entity principally engaged in the business of making commercial financing products in connection with the purchase or lease of products manufactured or distributed by its direct or indirect parent company or any direct or indirect subsidiary of the parent company; and

(2) a purchase–money obligation as defined in § 9–103 of the Uniform Commercial Code.

(b) Within 10 days after the regulations specified under subsection (a) of this section are adopted, the Commissioner of Financial Regulation shall notify the Department of Legislative Services.

1 (c) If notice of the adoption of the regulations specified under subsection (a) of
2 this section is received by the Department of Legislative Services on or before September
3 30, 2024, Section 2 of this Act shall take effect on the date the notice is received by the
4 Department of Legislative Services in accordance with subsection (b) of this section.

5 (d) If notice of the adoption of the regulations specified under subsection (a) of
6 this section is not received by the Department of Legislative Services on or before
7 September 30, 2024, Section 2 of this Act, with no further action required by the General
8 Assembly, shall be null and void.

9 SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That, subject to Section 3 of this
10 Act, this Act shall take effect October 1, 2023.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.