

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By

1 AMEND House Bill No. 2571, Page 15, Section 408.500, Line 61, by inserting after all of said  
2 section and line the following:

3  
4 "427.300. 1. This section shall be known, and may be cited, as the "Commercial Financing  
5 Disclosure Law".

6 2. For purposes of this section, the following terms mean:

7 (1) "Accounts receivable purchase transaction", any transaction in which the business  
8 forwards or otherwise sells to the provider all or a portion of the business's accounts or payment  
9 intangibles at a discount to their expected value;

10 (2) "Broker", any person or entity that, for compensation or the expectation of  
11 compensation, obtains a commercial financing product or an offer for a commercial financing  
12 product from a third party for a business located in this state;

13 (3) "Business", an individual or group of individuals, sole proprietorship, corporation,  
14 limited liability company, trust, estate, cooperative, association, or limited or general partnership  
15 engaged in a business activity;

16 (4) "Business purpose transaction", any transaction where the proceeds are provided to a  
17 business or are intended to be used to carry on a business and not for personal, family, or household  
18 purposes. For purposes of determining whether a transaction is a business purpose transaction, the  
19 provider may rely on any written statement of intended purpose signed by the business. The  
20 statement may be a separate statement or may be contained in an application, agreement, or other  
21 document signed by the business or the business owner or owners;

22 (5) "Commercial financing product", any commercial loan, accounts receivable purchase  
23 transaction, commercial open-end credit plan or each to the extent the transaction is a business  
24 purpose transaction;

25 (6) "Commercial loan", a loan to a business, whether secured or unsecured;

26 (7) "Commercial open-end credit plan", commercial financing extended by any provider  
27 under a plan in which:

28 (a) The provider reasonably contemplates repeat transactions; and

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

32 (8) "Depository institution", any of the following:

33 (a) A bank, trust company, or industrial loan company doing business under the authority of,  
34 or in accordance with, a license, certificate, or charter issued by the United States, this state, or any  
35 other state, district, territory, or commonwealth of the United States that is authorized to transact  
36 business in this state;

Action Taken \_\_\_\_\_ Date \_\_\_\_\_

1 (b) A federally chartered savings and loan association, federal savings bank, or federal  
2 credit union that is authorized to transact business in this state; or

3 (c) A savings and loan association, savings bank, or credit union organized under the laws  
4 of this or any other state that is authorized to transact business in this state;

5 (9) "Provider", a person or entity that consummates more than five commercial financing  
6 products to a business located in this state in any calendar year. "Provider" also includes a person or  
7 entity that enters into a written agreement with a depository institution to arrange for the extension  
8 of a commercial financing product by the depository institution to a business via an online lending  
9 platform administered by the person or entity. The fact that a provider extends a specific offer for a  
10 commercial financing product on behalf of a depository institution shall not be construed to mean  
11 that the provider engaged in lending or financing or originated that loan or financing.

12 3. (1) A provider that consummates a commercial financing product shall disclose the terms  
13 of the commercial financing product as required by this section. The disclosures shall be provided  
14 at or before consummation of the transaction and, in the case of a commercial open-end credit plan,  
15 the disclosures shall also be provided for any disbursement of funds after consummation within  
16 fifteen days following the last day of the month in which the disbursement of funds occurred under  
17 the commercial open-end credit plan.

18 (2) A provider shall disclose the following in connection with each commercial financing  
19 product:

20 (a) The total amount of funds provided to the business under the terms of the commercial  
21 financing product. This disclosure shall be labeled "Total Amount of Funds Provided";

22 (b) The total amount of funds disbursed to the business under the terms of the commercial  
23 financing product, if less than the total amount of funds provided, as a result of any fees deducted or  
24 withheld at disbursement and any amount paid to a third party on behalf of the business. This  
25 disclosure shall be labeled "Total Amount of Funds Disbursed";

26 (c) The total amount to be paid to the provider pursuant to the commercial financing product  
27 agreement. This disclosure shall be labeled "Total of Payments";

28 (d) The total dollar cost of the commercial financing product under the terms of the  
29 agreement, derived by subtracting the total amount of funds provided from the total of payments.  
30 This calculation shall include any fees or charges deducted by the provider from the total amount of  
31 funds provided disclosure. This disclosure shall be labeled "Total Dollar Cost of Financing";

32 (e) The manner, frequency, and amount of each payment. This disclosure shall be labeled  
33 "Payments". If the payments may vary, the provider shall instead disclose the manner, frequency,  
34 and the estimated amount of the initial payment labeled "Estimated Payments" and the commercial  
35 financing product agreement shall include a description of the methodology for calculating any  
36 variable payment and the circumstances when payments may vary;

37 (f) A statement of whether there are any costs or discounts associated with prepayment of  
38 the commercial financing product including a reference to the paragraph in the agreement that  
39 creates the contractual rights of the parties related to prepayment. This disclosure shall be labeled  
40 "Prepayment"; and

41 (g) A statement of whether any amount of the total amount of funds provided described  
42 under paragraph (a) of this subdivision are paid to a broker in connection with the commercial  
43 financing product and the amount of compensation.

44 4. This section shall not apply to the following:

45 (1) A provider that is a depository institution, or a subsidiary or service corporation of a  
46 depository institution, that is:

47 (a) Owned and controlled by a depository institution; and

48 (b) Regulated by a federal banking agency;

49 (2) A provider that is a lender regulated under the Farm Credit Act, 12 U.S.C. Section 2001

1 et seq.;

2 (3) A commercial financing product:

3 (a) That is secured by real property;

4 (b) That is a lease, as defined under section 400.2A-103; or

5 (c) That is a purchase-money obligation, as defined under section 400.9-103;

6 (d) In which the recipient is a motor vehicle dealer or an affiliate of such a dealer or a  
7 vehicle rental company or an affiliate of such a company, pursuant to a commercial loan or  
8 commercial open-end credit plan of at least fifty thousand dollars;

9 (e) Offered by a person in connection with the sale of products or services that such person  
10 manufactures, licenses, or distributes or whose parent company or any owned and controlled  
11 subsidiary thereof manufactures, licenses, or distributes; or

12 (f) That is a factoring transaction, purchase, sale, advance, or similar transaction of accounts  
13 receivables owed to a health care provider because the health care provider treated a patient's  
14 personal injury;

15 (4) A provider that is licensed as a money transmitter in accordance with a license,  
16 certificate, or charter issued by this state or any other state, district, territory, or commonwealth of  
17 the United States; or

18 (5) A provider that consummates not more than five commercial financing products in this  
19 state in a twelve-month period.

20 5. (1) Any person or entity that violates any provision of this section shall be punished by a  
21 fine of five hundred dollars per incident, not to exceed twenty thousand dollars for all aggregated  
22 violations arising from the use of the transaction documentation or materials found to be in violation  
23 of this section. Any person or entity that violates any provision of this section after receiving  
24 written notice of a prior violation from the attorney general shall be punished by a fine of one  
25 thousand dollars per incident, not to exceed fifty thousand dollars for all aggregated violations  
26 arising from the use of the transaction documentation or materials found to be in violation of this  
27 section.

28 (2) Violation of any provision of this section shall not affect the enforceability or validity of  
29 the underlying agreement.

30 (3) This section shall not create a private right of action against any person or other entity  
31 based upon compliance or noncompliance with its provisions.

32 (4) Authority to enforce compliance with this section is vested exclusively in the attorney  
33 general of this state."; and

34  
35 Further amend said bill by amending the title, enacting clause, and intersectional references  
36 accordingly.