

SENATE BILL No. 245

By Committee on Federal and State Affairs

2-13

1 AN ACT concerning financial institutions; enacting the commercial
2 financing disclosure act; requiring the disclosure of certain commercial
3 financing product transaction information; registration of commercial
4 finance brokers with the state bank commissioner; obtaining a surety
5 bond; providing for civil penalties; rules and regulations authority of
6 the commissioner; authorizing enforcement of such act by the attorney
7 general.

8
9 *Be it enacted by the Legislature of the State of Kansas:*

10 Section 1. (a) The provisions of sections 1 through 6, and
11 amendments thereto, shall be known and may be cited as the commercial
12 financing disclosure act.

13 (b) For purposes of sections 1 through 6, and amendments thereto:

14 (1) (A) "Account" means:

15 (i) A right to payment of a monetary obligation, whether or not
16 earned by performance, for:

17 (a) Property that has been or is to be sold, leased, licensed, assigned
18 or otherwise disposed of;

19 (b) services rendered or to be rendered;

20 (c) a policy of insurance issued or to be issued;

21 (d) a secondary obligation incurred or to be incurred;

22 (e) energy provided or to be provided;

23 (f) the use or hire of a vessel under a charter or other contract;

24 (g) arising out of the use of a credit card or charge card or
25 information contained on or for the use with such card; or

26 (h) winnings in a lottery or other game of chance operated or
27 sponsored by a state, governmental unit of a state or person licensed or
28 authorized to operate such lottery or game by a state or governmental unit
29 of a state; and

30 (ii) healthcare insurance receivables.

31 (B) "Account" does not mean:

32 (i) Rights to payment evidenced by chattel paper or an instrument;

33 (ii) commercial tort claims;

34 (iii) deposit accounts;

35 (iv) investment property;

36 (v) letter-of-credit rights or letters of credit; or

1 (vi) rights to payment for moneys advanced or sold other than rights
2 arising out of the use of a credit card or charge card or information
3 contained on or for use with such card.

4 (2) "Accounts receivable purchase transaction" means any transaction
5 in which a business forwards or otherwise sells to a provider all or a
6 portion of accounts of such business or payment intangibles at a discount
7 to the expected value of such accounts or payment intangibles. The
8 provider's characterization of an accounts receivable purchase transaction
9 as a purchase shall be conclusive that such accounts receivable purchase
10 transaction is not a loan or a transaction for the use, forbearance or
11 detention of money.

12 (3) "Act" means the commercial financing disclosure act.

13 (4) "Broker" means any person who, for compensation or the
14 expectation of compensation:

15 (A) Arranges a commercial financing product transaction between a
16 third party that, if executed, such transaction would be binding upon such
17 third party; and

18 (B) communicates such transaction to a business in this state.
19 "Broker" does not include a provider or any individual or entity whose
20 compensation is not based or dependent upon the terms of the specific
21 commercial financing product obtained or offered.

22 (5) "Business" means an individual, group of individuals, sole
23 proprietorship, corporation, limited liability company, trust, estate,
24 cooperative, association, limited partnership or general partnership
25 engaged in a business activity.

26 (6) "Business purpose transaction" means any transaction in which
27 the proceeds resulting therefrom are provided to a business or are intended
28 to be used to carry on a business and are not for personal, family or
29 household purposes. A provider may rely on any written statement of
30 intended purpose signed by a business to determine whether such
31 transaction is a "business purpose transaction". Such written statement
32 may be a separate statement or may be contained in an application,
33 agreement or other document signed by such business or the owner of such
34 business.

35 (7) "Commercial financing product" means any commercial loan,
36 accounts receivable purchase transaction and commercial open-end credit
37 plan when the transaction is a business purpose transaction.

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

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

42 (A) The provider reasonably contemplates repeat transactions; and

43 (B) subject to any limit set by the provider, the amount of financing

1 that such provider may extend to the business during the term of the plan
2 is made available to the extent that any outstanding balance is repaid.

3 (10) "Commissioner" means the state bank commissioner or the
4 commissioner's designee, who shall be the deputy commissioner of the
5 consumer and mortgage lending division of the office of the state bank
6 commissioner.

7 (11) "Depository institution" means a bank, trust company, industrial
8 loan company, savings and loan association, savings bank or credit union
9 doing business under the authority of a license, certificate or charter issued
10 by the United States, this state or any other state and that is authorized to
11 transact business in this state.

12 (12) "General intangible" means any personal property, including
13 things in action, other than accounts, chattel paper, commercial tort claims,
14 deposit accounts, documents, goods, instruments, investment property,
15 letter-of-credit rights, letters of credit, money and oil, gas or other minerals
16 before extraction. "General intangible" includes payment intangibles and
17 software.

18 (13) "Payment intangible" means a general intangible under which
19 the account debtor's principal obligation is a monetary obligation.

20 (14) "Person" means any individual, firm, company, partnership,
21 corporation or association.

22 (15) "Provider" means a person who consummates more than five
23 commercial financing product transactions to a business located in this
24 state in a calendar year. "Provider" includes a person that enters into a
25 written agreement with a depository institution to arrange for the extension
26 of a commercial financing product by such depository institution to a
27 business through an online lending platform administered by such person.

28 Sec. 2. (a) Before consummating a commercial financing product
29 transaction, a provider shall disclose to the business the terms of such
30 commercial financing product in accordance with the provisions of this
31 section. Only one disclosure shall be required for each commercial
32 financing product, and disclosure shall not be required when modification,
33 forbearance or change to a consummated commercial financing product
34 occurs.

35 (b) A provider shall disclose with each commercial financing product:

36 (1) The total amount of funds provided to the business under the
37 terms of such commercial financing product. Such disclosure shall be
38 labeled "total amount of funds provided";

39 (2) the total amount of funds disbursed to such business under the
40 terms of such commercial financing product if less than the total amount
41 of funds provided under paragraph (1). Such disclosure shall be labeled
42 "total amount of funds disbursed";

43 (3) the total amount to be paid to such provider pursuant to such

1 commercial financing product agreement. Such disclosure shall be labeled
2 "total of payments";

3 (4) the total dollar cost of such commercial financing product under
4 the terms of the agreement, which shall be determined by subtracting the
5 total amount of funds provided from the total of payments. Such
6 calculation shall include any fees or charges deducted by the provider from
7 the amount under paragraph (1). Such disclosure shall be labeled "total
8 dollar cost of financing";

9 (5) the manner, frequency and amount of each payment. Such
10 disclosure shall be labeled "payments". If such payments vary, the provider
11 shall instead disclose the manner, frequency and the estimated amount of
12 the initial payment and shall label such disclosure as "estimated
13 payments." The commercial financing product agreement shall include a
14 description of the methodology for calculating any variable payment and
15 the circumstances for when payments may vary; and

16 (6) a statement of whether there are any costs or discounts associated
17 with prepayment of such commercial financing product, including a
18 reference to the paragraph in such agreement that creates the contractual
19 right to prepayment. Such disclosure shall be labeled "prepayment".

20 Sec. 3. The provisions of this act shall not apply to a:

21 (a) Provider that is a depository institution or a subsidiary or service
22 corporation that is:

23 (1) Owned and controlled by a depository institution; and

24 (2) regulated by a federal banking agency;

25 (b) provider that is a lender regulated under the federal farm credit
26 act, 12 U.S.C. § 2001 et seq.;

27 (c) commercial financing product that is:

28 (1) Secured by real property;

29 (2) a lease; or

30 (3) a purchase money obligation that is incurred as all or part of the
31 price of the collateral or for value given to enable the business to acquire
32 rights in or the use of such collateral if such value is so used;

33 (d) commercial financing product in which the recipient is a motor
34 vehicle dealer or a vehicle rental company, or an affiliate of a motor
35 vehicle dealer or vehicle rental company, pursuant to a commercial loan or
36 commercial open-end credit plan of at least \$50,000 or a commercial
37 financing product offered by a person in connection with the sale or lease
38 of products or services that such person manufactures, licenses or
39 distributes or whose parent company or any of such parent company's
40 directly or indirectly owned and controlled subsidiaries manufactures,
41 licenses or distributes;

42 (e) provider that is licensed as a money transmitter in accordance
43 with the Kansas money transmitter act or the law of any other state,

1 district, territory or commonwealth of the United States; or
2 (f) provider that consummates no more than five commercial
3 financing product transactions in this state in a 12-month period.

4 Sec. 4. (a) No person shall engage in business as a commercial
5 financing broker in this state unless prior to conducting such business,
6 such person files for registration with the commissioner. Such registration
7 shall be effective upon receipt by the commissioner of a completed
8 registration form and the required registration fee.

9 (b) After filing an initial registration form, a broker shall file a
10 renewal registration form on or before January 31 of each year along with
11 the required renewal fee.

12 (c) A broker shall pay a \$100 registration fee upon the filing of an
13 initial registration and shall pay a \$50 renewal fee upon the filing of a
14 renewal registration.

15 (d) The registration form shall include:

16 (1) The name of the broker;

17 (2) the name with which the broker is doing business if different than
18 the name provided in paragraph (1);

19 (3) the address of the broker's principal office, regardless of whether
20 located in this state or outside of this state;

21 (4) whether any officer, director, manager, operator or principal of the
22 broker has been convicted of a felony involving an act of fraud,
23 dishonesty, breach of trust or money laundering; and

24 (5) the name and address of a designated agent in this state upon
25 whom service of process may be made.

26 (e) If any information required by the registration form changes or
27 becomes inaccurate after filing, the broker shall not be required to file a
28 further registration form prior to the time of renewal.

29 (f) Every broker shall obtain a surety bond issued by a surety
30 company authorized to do business in this state. The amount of such bond
31 shall be \$10,000. Such bond shall be in favor of the state of Kansas. Any
32 person damaged by the broker's breach of contract or of any obligation
33 arising therefrom, or by any violation of this act, may bring an action
34 against such bond to recover damages suffered. The aggregate liability of
35 the surety shall be only for actual damages and shall not exceed the
36 amount of such bond.

37 (g) Employees regularly employed by a broker that has complied with
38 this act shall not be required to file a registration or obtain a surety bond
39 when acting within the scope of employment for the broker.

40 Sec. 5. (a) Violations of the provisions of this act shall be punishable
41 by a civil penalty of \$500 per violation, but not to exceed \$20,000 for all
42 aggregated violations. Any person who violates the provisions of this act
43 after receiving written notice of a prior violation from the attorney general

1 shall be punishable by a civil penalty of \$1,000 per violation, but not to
2 exceed \$50,000 for aggregated violations.

3 (b) Violations of this act shall not affect the enforceability or validity
4 of the underlying agreement.

5 (c) This act shall not create a private right of action against any
6 person based upon compliance or noncompliance with the provisions of
7 this act.

8 (d) Authority to enforce compliance with this act shall be vested
9 exclusively with the attorney general.

10 Sec. 6. The commissioner shall adopt rules and regulations to
11 implement the provisions of this act. Such rules and regulations shall be
12 adopted on or before January 1, 2024.

13 Sec. 7. This act shall take effect and be in force from and after its
14 publication in the statute book.