

Effective 5/4/2022

Chapter 27
Commercial Financing Registration and Disclosure Act

Part 1
General Provisions

7-27-101 Definitions.

As used in this chapter:

- (1) "Accounts receivable purchase transaction" means a transaction in which a business forwards or otherwise sells to a person all or a portion of the business's accounts, as defined in Section 70A-9a-102, or payment intangibles, as defined in Section 70A-9a-102, at a discount to the accounts' or payment intangibles' expected value.
- (2) "Broker" means a person who, for compensation or the expectation of compensation, arranges a commercial financing transaction between a third party and a business in the state.
- (3) "Business" means a private enterprise carried on for the purpose of gain or economic profit.
- (4)
 - (a) "Business purpose transaction" means a transaction from which the resulting proceeds that a business receives are:
 - (i) provided to the business; or
 - (ii) intended to be used to carry on the business.
 - (b) "Business purpose transaction" does not include a transaction from which the resulting proceeds are intended to be used for personal, family, or household purposes.
 - (c) For purposes of determining whether a transaction is a business purpose transaction, a provider may rely on a written statement of intended purpose, signed by an individual authorized to sign on behalf of the business. The written statement may be contained in an application, agreement, or other document signed by an individual authorized to sign on behalf of the business.
- (5) "Commercial financing transaction" means a business purpose transaction:
 - (a) under which a person extends a business a commercial loan or a commercial open-end credit plan; or
 - (b) that is an accounts receivable purchase transaction.
- (6) "Commercial loan" means a loan to a business, regardless of whether the loan is secured.
- (7) "Commercial open-end credit plan" means commercial financing extended to a business on terms under which:
 - (a) the creditor reasonably contemplates repeat transactions; and
 - (b) subject to any limit set by the creditor, the amount of financing that the creditor may extend to the business during the term of the plan is made available to the extent that any outstanding balance is repaid.
- (8) "Motor vehicle dealer" means a dealer as defined in Section 41-3-102.
- (9)
 - (a) "Provider" means a person who consummates more than five commercial financing transactions in the state during any calendar year.
 - (b) "Provider" includes a person who, under a written agreement with a depository institution, offers one or more commercial financing products provided by the depository institution via an online platform that the person administers.

Enacted by Chapter 449, 2022 General Session

7-27-102 Application.

The provisions of this chapter do not apply to:

- (1) a provider that is a depository institution;
- (2) a provider that is:
 - (a)
 - (i) a subsidiary of a depository institution; or
 - (ii) a service corporation for a depository institution; and
 - (b) regulated by a federal banking agency;
- (3) a provider that is regulated under the federal Farm Credit Act 12 U.S.C. Sec. 2001 et seq.;
- (4) a provider that is licensed as a money transmitter in accordance with Chapter 25, Money Transmitter Act;
- (5) a provider that consummates five or fewer commercial financing products in the state during any 12 month period;
- (6) a commercial financing transaction secured by real property;
- (7) a commercial financing transaction that is a lease as defined in Section 70A-2a-103;
- (8) a commercial financing transaction that is a purchase-money obligation as defined in Section 70A-9a-103;
- (9) a commercial financing transaction that:
 - (a) involves a commercial loan or a commercial open-end credit plan;
 - (b) is \$50,000 or more; and
 - (c) extends the commercial loan or the commercial open-end credit plan to:
 - (i) a motor vehicle dealer or the motor vehicle dealer's affiliate; or
 - (ii) a motor vehicle rental company as defined in Section 13-48-103 or the motor vehicle rental company's affiliate;
- (10) a commercial financing transaction offered by a person in connection with the sale of a product or service that:
 - (a) the person manufactures, licenses, or distributes; or
 - (b) the person's parent company or the person's owned and controlled subsidiary manufactures, licenses, or distributes; or
- (11) a commercial financing transaction of more than \$1,000,000.

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**Part 2
Registration**

7-27-201 Registration requirements -- Rulemaking.

- (1)
 - (a) Beginning January 1, 2023, it is unlawful for a person to engage in a commercial financing transaction as a provider in Utah or with a Utah resident, unless the person:
 - (i) registers with the department in accordance with this chapter; and
 - (ii) maintains a valid registration.
 - (b) An officer or employee of a person required to register under this section is not required to register if the person for whom the individual is an officer or employee is registered.

- (2)
 - (a) A registration and a renewal of registration expires on December 31 of each year.
 - (b) To register or renew a registration under this section, a person shall:
 - (i) pay an original registration fee established under Subsection 7-1-401(8); and
 - (ii) submit a registration statement containing the information described in Subsection (2)(d).
 - (c) To renew a registration under this section, a person shall:
 - (i) pay the annual fee established under Subsection 7-1-401(5); and
 - (ii) submit a renewal statement containing the information described in Subsection (2)(d).
 - (d) A registration or renewal statement shall state:
 - (i) the name of the person;
 - (ii) the name in which the business will be transacted if different from that required in Subsection (2)(d)(i);
 - (iii) the address of the person's principal business office, regardless of whether in the state or outside the state;
 - (iv) the address of each office in this state at which the person engages in commercial financing transactions;
 - (v) if the person engages in commercial financing transactions in this state but does not maintain an office in the state, a brief description of the manner in which the business is conducted;
 - (vi) the name and address in this state of a designated agent upon whom service of process may be made;
 - (vii) whether there is a conviction of a crime:
 - (A) involving an act of fraud, dishonesty, breach of trust, or money laundering; and
 - (B) with respect to that person, an officer, director, manager, operator, or principal of that person, or an employee of that person engaged in the business described in this chapter;
 - (viii) evidence satisfactory to the department that the person is registered with the Nationwide Multistate Licensing System and Registry; and
 - (ix) any other information required by the rules of the department.
 - (e)
 - (i) The commissioner may impose an administrative fine determined under Subsection (2)(e)(ii) on a person if:
 - (A) the person is required to be registered under this chapter;
 - (B) the person fails to register or renew a registration in accordance with this chapter;
 - (C) the department notifies the person that the person is in violation of this chapter for failure to be registered; and
 - (D) the person fails to register within 30 days after the day on which the person receives the notice described in Subsection (2)(e)(i)(C).
 - (ii) Subject to Subsection (2)(e)(iii), the administrative fine imposed under this Subsection (2)(e) is:
 - (A) \$500 if the person has zero or one office in this state at which the person engages in commercial financing transactions; or
 - (B) if the person has two or more offices in this state at which the person engages in commercial financing transactions, \$500 for each office at which the person engages in commercial financing transactions.
 - (iii) The commissioner may reduce or waive a fine imposed under this Subsection (2)(e) if the person shows good cause.- (3) If the information in a registration or renewal statement required under Subsection (2) becomes inaccurate after filing, a person is not required to notify the department until:

- (a) that person is required to renew the registration; or
 - (b) the department specifically requests earlier notification.
- (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules consistent with this section:
- (a) providing for the form, content, and filing of a registration and renewal statement; and
 - (b) providing for the transition of persons registering with the nationwide database.

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7-27-202 Disclosures for commercial financing transactions.

- (1)
- (a) Before consummating a commercial financing transaction, a provider shall disclose the terms of the commercial financing transaction in accordance with this section and rules made by the commissioner.
 - (b) In addition to the requirements of Subsection (1)(a), for a commercial open-end credit plan, the provider shall make the disclosures described in this section:
 - (i) after any disbursement of funds that occurs after the parties consummate the commercial financing transaction; and
 - (ii) no later than 15 days after the last day of the calendar month in which the disbursement of funds occurs.
- (2) A provider shall disclose the following information in connection with each commercial financing transaction:
- (a) the total amount of funds provided to the business under the terms of the commercial financing transaction;
 - (b) the total amount of funds disbursed to the business under the terms of the commercial financing transaction, if less than the amount described in Subsection (2)(a);
 - (c) the total amount to be paid to the provider under the terms of the commercial financing transaction;
 - (d) the total dollar cost of the commercial financing transaction, calculated by finding the difference between:
 - (i) the amount described in Subsection (2)(a); and
 - (ii) the amount described in Subsection (2)(c);
 - (e)
 - (i) the manner, frequency, and amount of each payment; or
 - (ii) if the amount of each payment may vary, the manner, frequency, and estimated amount of the initial payment;
 - (f) a statement of whether there are any costs or discounts associated with prepayment under the commercial financing transaction, including a reference to the paragraph in the commercial financing transaction agreement that creates each cost or discount; and
 - (g) any amount of the funds described in Subsection (2)(a) that the provider pays to a broker in connection with the commercial financing transaction.
- (3) The commercial financing transaction agreement shall include a description of the methodology for calculating any variable payment amount and the circumstances that may cause a payment amount to vary.
- (4) The provisions of this section apply to a commercial financing transaction consummated on or after January 1, 2023.

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Part 3 Enforcement

7-27-301 Penalties.

- (1) Subject to the requirements of Title 63G, Chapter 4, Administrative Procedures Act, the department may:
 - (a) receive and act on complaints;
 - (b) take action designed to obtain voluntary compliance with this chapter; or
 - (c) commence administrative or judicial proceedings on the department's own initiative to enforce compliance with this chapter.
- (2) A person who violates a provision of this chapter is subject to a civil penalty of \$500 per violation, not to exceed \$20,000 for all violations arising from the use of the same transaction documentation or materials.
- (3) A person who violates a provision of this chapter after receiving written notice of a prior violation is subject to a civil penalty of \$1,000 per violation, not to exceed \$50,000 for all violations arising from the use of the same transaction documentation or materials.
- (4) Nothing in this chapter creates a private right of action against any person based on failure to comply with the provisions of this chapter.
- (5) A violation of this chapter does not affect the enforceability of any underlying agreement.

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