

Senator Curtis S. Bramble proposes the following substitute bill:

FINANCIAL INSTITUTION AND CONSUMER NOTIFICATION

AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: A. Cory Maloy

LONG TITLE

General Description:

This bill modifies provisions relating to commercial financing transactions and consumer lender notifications.

Highlighted Provisions:

This bill:

- ▶ repeals provisions relating to disclosures for commercial financing transactions;
- ▶ requires a consumer lender to submit to the commissioner of financial institutions

evidence of registration through the Nationwide Multistate Licensing System and Registry; and

- ▶ defines terms; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 26 7-27-101, as enacted by Laws of Utah 2022, Chapter 449
- 27 7-27-202, as enacted by Laws of Utah 2022, Chapter 449
- 28 70C-1-302, as last amended by Laws of Utah 2009, Chapter 72
- 29 70C-8-202, as last amended by Laws of Utah 2013, Chapter 73
- 30 70C-8-203, as last amended by Laws of Utah 2014, Chapter 97

31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section 7-27-101 is amended to read:

33 **7-27-101. Definitions.**

34 As used in this chapter:

35 (1) "Accounts receivable purchase transaction" means a transaction in which a business
36 forwards or otherwise sells to a person all or a portion of the business's accounts, as defined in
37 Section 70A-9a-102, or payment intangibles, as defined in Section 70A-9a-102, at a discount to
38 the accounts' or payment intangibles' expected value.

39 (2) (a) "Broker" means ~~[a person who, for compensation or the expectation of~~
40 ~~compensation, arranges a commercial financing transaction between a third party and a~~
41 ~~business in the state]~~ a person who:

42 (i) for compensation or the expectation of compensation, obtains a commercial
43 financing product or an offer for a commercial financing product from a third party that, if
44 executed, would bind the third party; and

45 (ii) communicates the offer described in Subsection (2)(a)(i) to a business located in
46 the state.

47 (b) "Broker" does not include:

48 (i) a provider; or

49 (ii) a person whose compensation is not based or dependent on the terms of a specific
50 commercial financing product that the person obtains or offers.

51 (3) "Business" means a private enterprise carried on for the purpose of gain or
52 economic profit.

53 (4) (a) "Business purpose transaction" means a transaction from which the resulting
54 proceeds that a business receives are:

55 (i) provided to the business; or

57 (ii) intended to be used to carry on the business.

58 (b) "Business purpose transaction" does not include a transaction from which the
59 resulting proceeds are intended to be used for personal, family, or household purposes.

60 (c) For purposes of determining whether a transaction is a business purpose
61 transaction, a provider may rely on a written statement of intended purpose, signed by an
62 individual authorized to sign on behalf of the business. The written statement may be contained
63 in an application, agreement, or other document signed by an individual authorized to sign on
64 behalf of the business.

65 (5) "Commercial financing transaction" means a business purpose transaction:

66 (a) under which a person extends a business a commercial loan or a commercial
67 open-end credit plan; or

68 (b) that is an accounts receivable purchase transaction.

69 (6) "Commercial loan" means a loan to a business, regardless of whether the loan is
70 secured.

71 (7) "Commercial open-end credit plan" means commercial financing extended to a
72 business on terms under which:

73 (a) the creditor reasonably contemplates repeat transactions; and

74 (b) subject to any limit set by the creditor, the amount of financing that the creditor
75 may extend to the business during the term of the plan is made available to the extent that any
76 outstanding balance is repaid.

77 (8) "Motor vehicle dealer" means a dealer as defined in Section [41-3-102](#).

78 (9) (a) "Provider" means a person who consummates more than five commercial
79 financing transactions in the state during any calendar year.

80 (b) "Provider" includes a person who, under a written agreement with a depository
81 institution, offers one or more commercial financing products provided by the depository
82 institution via an online platform that the person administers.

83 Section 2. Section **7-27-202** is amended to read:

84 **7-27-202. Disclosures for commercial financing transactions.**

85 (1) [~~(a)~~] Before consummating a commercial financing transaction, a provider shall
86 disclose the terms of the commercial financing transaction in accordance with this section and
87 rules made by the commissioner.

88 ~~[(b) In addition to the requirements of Subsection (1)(a), for a commercial open-end~~
89 ~~credit plan, the provider shall make the disclosures described in this section:]~~

90 ~~[(i) after any disbursement of funds that occurs after the parties consummate the~~
91 ~~commercial financing transaction; and]~~

92 ~~[(ii) no later than 15 days after the last day of the calendar month in which the~~
93 ~~disbursement of funds occurs.]~~

94 (2) A provider shall disclose the following information in connection with each
95 commercial financing transaction:

96 (a) the total amount of funds provided to the business under the terms of the
97 commercial financing transaction;

98 (b) the total amount of funds disbursed to the business under the terms of the
99 commercial financing transaction, if less than the amount described in Subsection (2)(a);

100 (c) the total amount to be paid to the provider under the terms of the commercial
101 financing transaction;

102 (d) the total dollar cost of the commercial financing transaction, calculated by finding
103 the difference between:

104 (i) the amount described in Subsection (2)(a); and

105 (ii) the amount described in Subsection (2)(c);

106 (e) (i) the manner, frequency, and amount of each payment; or

107 (ii) if the amount of each payment may vary, the manner, frequency, and estimated
108 amount of the initial payment; and

109 (f) a statement of whether there are any costs or discounts associated with prepayment
110 under the commercial financing transaction, including a reference to the paragraph in the
111 commercial financing transaction agreement that creates each cost or discount ~~[, and].~~

112 ~~[(g) any amount of the funds described in Subsection (2)(a) that the provider pays to a~~
113 ~~broker in connection with the commercial financing transaction.]~~

114 (3) The commercial financing transaction agreement shall include a description of the
115 methodology for calculating any variable payment amount and the circumstances that may
116 cause a payment amount to vary.

117 (4) The provisions of this section apply to a commercial financing transaction
118 consummated on or after January 1, 2023.

119 Section 3. Section 70C-1-302 is amended to read:

120 **70C-1-302. Definitions.**

121 As used in this title:

122 (1) "Agreement" means the bargain of the parties in fact as stated in a written contract
123 or otherwise as found in the parties' language or by implication from other circumstances,
124 including:

125 (a) course of dealing;

126 (b) usage of trade; or

127 (c) course of performance.

128 (2) "Commissioner" means the commissioner of financial institutions appointed under
129 Section 7-1-202.

130 [~~(2)~~] (3) "Contract" means a document containing written terms and conditions of a
131 credit agreement.

132 [~~(3)~~] (4) (a) "Creditor" means:

133 (i) a party:

134 (A) who regularly extends consumer credit that is subject to a finance charge or is
135 payable by written agreement in more than four installments, not including a down payment;
136 and

137 (B) to whom the obligation is initially payable, either on the face of the note or
138 contract, or by agreement when there is no note or contract;

139 (ii) an issuer of a credit card that extends either open-end credit or credit that:

140 (A) is not subject to a finance charge; and

141 (B) is not payable by written agreement in more than four installments; and

142 (iii) an issuer of a credit card that extends closed-end credit that:

143 (A) is subject to a finance charge; or

144 (B) is payable by written agreement in more than four installments.

145 (b) (i) For purposes of this Subsection [~~(3)~~], (4), a party is considered to extend
146 consumer credit regularly only if the party extends credit in the preceding calendar year:

147 (A) more than 25 times; or

148 (B) more than five times for a transaction secured by a dwelling.

149 (ii) If a person does not meet the numerical standards described in Subsection

150 ~~[(3)(b)(i)]~~ (4)(b)(i) in the preceding calendar year, the numerical standards shall be applied to
151 the current calendar year.

152 ~~[(4)]~~ (5) "Dwelling" means a residential structure attached to real property that contains
153 one to four units including any of the following if used as a residence:

- 154 (a) a condominium unit;
- 155 (b) a cooperative unit;
- 156 (c) a manufactured home; or
- 157 (d) a house.

158 ~~[(5)]~~ (6) "Earnings" means compensation paid or payable to an individual or for the
159 individual's account for personal services rendered or to be rendered by the individual whether
160 denominated as wages, salary, commission, bonus, or otherwise, and includes periodic
161 payments pursuant to a pension, retirement, or disability program.

162 ~~[(6)]~~ (7) "Installment" means a payment upon a debt that is part of a series of
163 payments, each of which is less than the original amount of the debt and scheduled as to a
164 specific amount and due date by agreement of the parties for the purpose of repaying the debt.

165 (8) "Nationwide database" means the Nationwide Multistate Licensing System and
166 Registry, described in 12 U.S.C. Sec. 5101.

167 ~~[(7)]~~ (9) "Party" means an individual and any other entity legally capable of entering
168 into a binding contract.

169 Section 4. Section **70C-8-202** is amended to read:

170 **70C-8-202. Notification.**

171 (1) (a) A party who is subject to this part shall file notification with the department at
172 least 30 days before commencing business in this state.

173 (b) After filing the notification required by Subsection (1)(a), a party shall file a
174 notification on or before ~~[January]~~ December 31 of each year.

175 (c) A notification required by this Subsection (1) shall:

- 176 (i) state the name of the party;
- 177 (ii) state the name in which the business is transacted if different from that required in
178 Subsection (1)(c)(i);
- 179 (iii) state the address of the party's principal office, which may be outside this state;
- 180 (iv) state the address of:

181 (A) each office or retail store, if any, in this state at which credit is offered or extended
182 to a consumer; or

183 (B) in the case of a party taking an assignment of an obligation, each office or place of
184 business within this state at which business is transacted;

185 (v) if credit is extended to a consumer other than at an office or retail store in this state,
186 state a brief description of the manner in which the credit transaction occurs;

187 (vi) state the name and address in this state of a designated agent upon whom service of
188 process may be made;

189 (vii) ~~[submit]~~ include evidence satisfactory to the commissioner that the ~~[person]~~ party
190 is authorized to conduct business in this state as a domestic or foreign entity pursuant to filings
191 with the Division of Corporations and Commercial Code under Title 16, Corporations, or Title
192 48, Unincorporated Business Entity Act; ~~[and]~~

193 (viii) include evidence satisfactory to the commissioner that the party is registered with
194 the nationwide database; and

195 ~~[(viii) provide]~~ (ix) include any other information considered pertinent by the
196 department.

197 (2) If information in a notification becomes inaccurate after filing, a party is not
198 required to file further notification until required to renew the party's notification.

199 (3) (a) A party who fails to file a notification or pay a fee required by this part may not
200 extend credit to a consumer in this state until the party fully complies with this part.

201 (b) A party who willfully violates this Subsection (3) is guilty of a class B
202 misdemeanor.

203 Section 5. Section **70C-8-203** is amended to read:

204 **70C-8-203. Fees -- Examinations.**

205 (1) A party required to file notification under Section **70C-8-202** shall, on or before
206 ~~[January 31]~~ December 31 of each year, pay to the department an annual fee of \$100.

207 (2) In addition to filing notification, a party subject to this part, and a depository
208 institution subject to this title:

209 (a) may be required to make a book or record relating to a consumer credit transaction
210 available to the department or its authorized representative for examination; and

211 (b) shall pay to the department a fee to be set by the department based on an hourly rate

212 per each examiner.

213 (3) No portion of a fee paid or owed to the department under this part is refundable
214 because a party voluntarily or involuntarily ceases to extend credit to consumers:

215 (a) during the period covered by the fee; or

216 (b) before the time of an examination by the department of a book or record pertaining
217 to a preceding consumer credit transaction.

218 **Section 6. Effective date.**

219 This bill takes effect on May 1, 2024.