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WHAT IS S05470B?

The New York legislature delivered a bill to the Governor for his signature on December 11, 2020 that would require Private Lenders who make certain "Commercial Financing Transactions" to provide a wide range of loan disclosures to commercial borrowers. These loan disclosures are substantially similar to many consumer disclosures provided by lenders for consumer loans that are covered by the Truth-in-Lending Act and its implementing Regulation Z.

WHO IS INCLUDED?

The Bill would apply to a person (called a "Provider") who:

1. ***Makes a "Specific Offer"*** (including specific terms such as price or amount) for a "Commercial Financing Transaction" to a certain type of Borrowers or other "Recipients," or
2. ***Solicits and presents*** specific offers of Commercial Financing Transactions on behalf of a third party.

WHAT KIND OF A BORROWER OR "RECIPIENT" IS COVERED?

The Bill would apply to a "Recipient" who:

1. ***Applies for*** a Commercial Financing Transaction; AND
2. ***Receives a*** "Specific Offer" for a "Commercial Financing Transaction" from a "Provider."

A broker cannot be a Recipient.

WHAT KIND OF COMMERCIAL FINANCING TRANSACTIONS ARE COVERED?

The Bill would apply to the following categories of "Commercial Financing Transactions" that will be used by a borrower for a business or commercial purpose. Lenders must include a Borrower's certification of business purpose in the credit file.

1. ***Closed-End Financings.*** An installment loan that is either unsecured or secured by personal property.
2. ***Open-End Financings.*** A revolving credit agreement that is either unsecured or secured by personal property.
3. ***Factoring Transactions.*** An accounts receivable purchase transaction where a business owner who sells good or services to customers in return for future payment sells to another person the right to receive the future payments from the customers.
4. ***Sales-Based Financings.*** A credit transaction that a recipient repays over time as a percentage of sales or revenue where the payment amounts goes up or down based on sales volume or revenue. This type of transaction can also include a "true-up" mechanism where payments are fixed but there is a later reconciliation based on sales volume or revenue.
5. ***Other Commercial Financing Transactions.***

WHAT KIND OF CREDIT TRANSACTIONS WOULD BE EXEMPT?

The following Commercial Financing Transactions do NOT apply to the following:

1. ***Commercial Financing Transactions Secured by Real Property.*** A Commercial Financing Transaction that is secured by real property.

2. ***< 5 Commercial Financings in 12-Month Period.*** A person who makes no more than 5 Commercial Financing Transactions in NY in a 12-month period.
3. ***Commercial Financing Transaction > $500,000.*** An individual Commercial Financing Transaction that is > $500,000.
4. ***Lease Transactions.*** A "lease" as defined in Section 2-A-103 of the UCC.
5. ***Depository Institutions.*** Federal or state banks, trust companies, industrial loan companies, savings associations or credit unions authorized to transact business in NY.
6. ***Farm Credit Act Lenders.*** Lenders who are regulated under the federal Farm Credit Act.
7. ***Certain Technology Providers.*** A person acting as a technology services provider (for example, licensing software) who provides support services to an entity that is exempt under the Bill where the technology services are used as part of the exempt entity's Commercial Financing Program, as long as the technology provider does not have an agreement to buy any interest in the Commercial Financing Transaction made by the exempt entity in connection with the Program.

WHAT KIND OF DISCLOSURES ARE REQUIRED FOR CLOSED-END COMMERCIAL FINANCING TRANSACTIONS?

A Provider must give the following disclosures to a Recipient at the time that the Provider makes a "Specific Offer" for a Closed-End Commercial Financing Transaction. The New York Superintendent of Financial Services will publish rules for the formatting of these disclosures.

1. ***Total Amount.*** The total amount of the Commercial Financing Transaction and, if different, the amount disbursed, after fees deducted or withheld at disbursement.
2. ***Finance Charge.*** The finance charge, as determined under Section 1026.4 of Regulation Z and by the New York Superintendent of Financial Services.
3. ***APR.*** The Annual Percentage Rate, using only the words "Annual Percentage rate" or "APR," expressed as a yearly ratee that includes any fees and Finance Charges that cannot be avoided by the Recipient. The APR must be calculated using the rules in Section 1026.22 of Regulation Z.
4. ***Total Repayment Amount.*** The Total Repayment Amount = the disbursement amount + the Finance Charge.
5. ***Term.*** The term of the Commercial Financing Transaction.
6. ***Payment Amounts.***
   - Fixed Payment Amounts. The payment amounts and frequency (daily, weekly, monthly, etc.). If the term is > one month, the average monthly payment amount.
   - Variable Payment Amounts. A full payment schedule or a description of the method that is used to calculate the amounts and frequency of payments. If the term if longer than one month, the estimated average monthly payment amount.
7. ***Avoidable Fees and Charges.*** All other fees and charges that can be avoided by the Recipient (e.g., late fees and returned payment fees).
8. ***Prepayment Disclosures.*** If a Recipient pays off or refinances a Commercial Financing Transaction prior to full repayment:

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- If Recipient must pay any Finance Charges other than interest accrued since the Recipient's last payment. If yes, the percentage of any unpaid portion of the Finance Charge and maximum dollar amount that the Recipient could be required to pay.
- Whether the Recipient would be required to pay any additional fees not already included in the Finance Charge.

9. ***Collateral. A description of any collateral requirements or security interests.***

WHAT KIND OF DISCLOSURES ARE REQUIRED FOR OPEN-END COMMERCIAL FINANCING TRANSACTIONS?

A Provider must give the following disclosures to a Recipient at the time that the Provider makes a "Specific Offer" for a Closed-End Commercial Financing Transaction. The New York Superintendent of Financial Services will publish rules for the formatting of these disclosures.

1. ***Maximum Amount.*** The:
   - Maximum amount of credit that is available to the Recipient (maximum credit line), and
   - Amount that the Recipient is scheduled to draw at the time the offer is extended (if any) minus any fees deducted or withheld at disbursement.
2. ***Finance Charge.*** The finance charge, as determined under Section 1026.4 of Regulation Z and by the New York Superintendent of Financial Services.
3. ***APR.*** The Annual Percentage Rate, using only the words "Annual Percentage rate" or "APR," expressed as a nominal yearly ratee that includes any fees and Finance Charges that cannot be avoided by the Recipient. The APR must be calculated using the rules in Section 1026.22 of Regulation Z and based on the maximum amount of credit available to the recipient and the term resulting from making the minimum payment terms disclosed.
4. ***Total Repayment Amount.***
   - The Total Repayment Amount = (draw amount – fees deducted or withheld at disbursement) + the Finance Charge.
   - Assumes a draw amount = maximum amount of credit available to the Recipient if drawn and held for the duration and term or draw period.
5. ***Term.*** The term of the plan, if applicable, or the period over which a draw is amortized.
6. ***Payment Frequency and Amounts.***
   - Assumptions. Based on the assumptions used in the calculation of the APR.
   - Description of Payment Amount Requirements. Includes a description of payment amount requirements, such as a minimum payment amount.
   - Payment Frequency is Not Monthly. the amount of the average projected payments per month.
   - Variable Payment Amounts. For variable payment amounts, (i) a payment schedule or a description of the method used to calculate the amounts and frequency of payments, and (ii) the estimated average monthly payment amount.
7. ***Avoidable Fees and Charges.*** All other fees and charges that can be avoided by the Recipient (e.g., draw fees, late fees and returned payment fees).

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8. ***Prepayment Disclosures.*** If a Recipient pays off or refinances a Commercial Financing Transaction prior to full repayment:
   - If Recipient must pay any Finance Charges other than interest accrued since the Recipient's last payment. If yes, the percentage of any unpaid portion of the Finance Charge and maximum dollar amount that the Recipient could be required to pay.
   - Whether the Recipient would be required to pay any additional fees not already included in the Finance Charge.
9. ***Collateral.*** A description of any collateral requirements or security interests.

WHAT KIND OF DISCLOSURES ARE REQUIRED FOR FACTORING TRANSACTIONS?

A Provider must give the following disclosures to a Recipient at the time that the Provider makes a "Specific Offer" for a Factoring Transaction. The New York Superintendent of Financial Services will publish rules for the formatting of these disclosures.

1. ***Receivables Purchase Price.*** The amount of the receivables purchase price paid to the Recipient and, if different from the purchase price, the amount disbursed to the Recipient after any fees deducted or withheld at disbursement.
2. ***Finance Charge.*** The finance charge, as determined under Section 1026.4 of Regulation Z and by the New York Superintendent of Financial Services.
3. ***APR.***
   - The estimated annual percentage rate, using that term, calculated under Appendix J to Regulation Z, as a "single advance, single payment transaction".
   - To calculate the estimated annual percentage rate:
     - » The purchase amount is considered the financing amount,
     - » The purchase amount minus the finance charge is considered the payment amount, and
     - » The term is established by the payment due date of the receivables. As an alternate method of establishing the term, the Provider may estimate the term for a factoring transaction as the average payment period, its historical data over a period not to exceed the previous 12 months, concerning payment invoices paid by the party owing the accounts receivable in question.
4. ***Total Payment Amount.*** The total payment amount = purchase amount + Finance Charge.
5. ***Avoidable Fees and Charges.*** A description of all other potential fees and charges that can be avoided by the Recipient.
6. ***Collateral.*** A description of the receivables purchased and any additional collateral requirements or security interests.

WHAT KIND OF DISCLOSURES ARE REQUIRED FOR SALES-BASED COMMERCIAL FINANCING TRANSACTIONS?

A Provider must give the following disclosures to a Recipient at the time that the Provider makes a "Specific Offer" for a Sales-Based Financing. The New York Superintendent of Financial Services will publish rules for the formatting of these disclosures.

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1. ***Total Amount.***
   - The total amount of the commercial financing.
   - The disbursement amount, if different from the financing amount, after any fees deducted or withheld at disbursement.
2. ***Finance Charge.*** The finance charge, as determined under Section 1026.4 of Regulation Z and by the New York Superintendent of Financial Services.
3. ***APR.*** The estimated annual percentage rate, using the words "Annual Percentage Rate" or the abbreviation "APR", expressed as yearly rate, inclusive of any fees and finance charges, and calculated in accordance with Section 1026.22 of Regulation Z based on the estimated term of repayment and the projected periodic payment amounts.
   - The estimated term of repayment and the projected periodic payment amounts are calculated based on the projection of the Recipient's sales, called the "projected sales volume."
   - The projected sales volume may be calculated using the historical method or the opt-in method. The Provider must notify the New York Superintendent of Financial Institutions which method the Provider will use across all instances of sales-based financing offered in calculating the estimated APR.
   - A Provider that uses the historical method must use an average historical volume of sales or revenue by which the financing's payment amounts are based and the estimated APR is calculated. The provider must fix the historical time period used to calculate the average historical volume and use such period for all disclosure purposes for all sales-based financing products offered.
   - The fixed historical time period must either be the preceding time period from the specific offer or, alternatively, the provider may use average sales for the same number of months with the highest sales volume within the past 12 months. The fixed historical time period may be no less than one month and not exceed 12 months.
   - A Provider that uses the opt-in method must determine the estimated APR, the estimated term, and the projected payments, using a projected sales volume that the provider elects for each disclosure, provided, that they participate in a review process prescribed by the New York Superintendent of Financial Institutions.
   - A provider must each year report data to the New York Superintendent of Financial Institutions of estimated APRs disclosed to the Recipient and actual retrospective APRs of completed transactions. The report must contain such information as the New York Superintendent of Financial Institutions, by rule or regulation, may prescribe as necessary or appropriate for the purpose of making a determination of whether the deviation between the estimated APRs and the actual APRs of completed transactions was reasonable. The New York Superintendent of Financial Institutions will establish the method of reporting and may, upon a finding that the use of projected sales volume by the Provider has resulted in an unacceptable deviation between estimated and actual APRs, require the Provider to use the historical method. The New York Superintendent of Financial Institutions may consider unusual and extraordinary circumstances impacting the provider's deviation between estimated and actual APR in determining the finding.
4. ***Total Repayment Amount.*** The total repayment amount = the disbursement amount + Finance Charge.
5. ***Estimated Term.*** The estimated term is the period of time required for the periodic payments, based on the projected sales volume, to equal the total amount required to be repaid.

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6. ***Payment Amounts.*** The payment amounts, based on the projected sales volume:
   - Fixed Payment Amounts.
     - » The payment amounts and frequency (e.g., daily, weekly, monthly).
     - » If the payment frequency other than monthly, the amount of the average projected payment per month; or
   - Variable Payment Amounts. A payment schedule or a description of the method used to calculate the amounts and frequency of payments, and the amount of the average projected payments per month.
7. ***Fees and Charges Not Included in the Finance Charge.*** A description of all other potential fees and charges not included in the Finance Charge, including, but not limited to, draw fees, late fees, and returned payment fees.
8. ***Prepayment Disclosures.*** Id the Recipient pays off or refinance the commercial financing prior to full repayment, the provider must disclose:
   - whether the Recipient would be required to pay any finance charges other than interest accrued since their last payment. If yes, disclosure of the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient could be required to pay; and
   - whether the recipient would be required to pay any additional fees not already included in the finance charge.
9. ***Collateral.*** A description of collateral requirements or security interests, if any.

WHAT KIND OF DISCLOSURES ARE REQUIRED FOR OTHER TYPES OF COMMERCIAL FINANCING TRANSACTIONS?

The New York Superintendent of Financial Institutions may require a Provider to disclose Specific Offers of Commercial Financing Transactions that are not described above but otherwise meets the definition of a Commercial Financing Transaction. A Provider must provide the following disclosures to a Recipient at the time of extending a Specific Offer of other forms of Commercial Financing Transactions using formats required by the New York Superintendent of Financial Institutions.

1. ***Total Amount.***
   - The total amount of the commercial financing.
   - The disbursement amount, if different from the financing amount, after any fees deducted or withheld at disbursement.
2. ***Finance Charge.*** The finance charge, as determined under Section 1026.4 of Regulation Z and by the New York Superintendent of Financial Services.
3. ***APR.*** The annual percentage rate, using only the words "Annual Percentage rate" or the abbreviation "APR", expressed as a yearly rate, inclusive of any fees and finance charges, and calculated in accordance with the 31 relevant sections of Regulation Z and this Bill.
4. ***Total Repayment Amount.*** The total repayment amount = the disbursement amount + the Finance Charge.
5. ***Term.*** The term of the financing.

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6. ***Payment Amounts.*** The payment amounts:
   - Fixed Payment Amounts. The payment amounts and frequency (e.g., daily, weekly, monthly), and the average monthly payment amount; or
   - Variable Payment Amounts. A payment schedule or a description of the method used to calculate the amounts and frequency of payments, and the estimated average monthly payment amount.
7. ***Avoidable Fees and Charges.*** A description of all other potential fees and charges that can be avoided by the recipient, including, but not limited to, late payments, and returned payment fees.
8. ***Prepayment Disclosures.*** If a Recipient pays off or refinances A Commercial Financing Transaction prior to full repayment, the Provider must disclose:
   - whether the Recipient would be required to pay any finance charges other than interest accrued since their last payment. If yes, disclosure of the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient could be required to pay; and
   - whether the Recipient would be required to pay any additional fees not already included in the finance charge.
9. ***Collateral.*** A description of collateral requirements or security interests, if any.

WHAT KIND OF DISCLOSURES ARE REQUIRED FOR RENEWALS?

If, as a condition of obtaining a Commercial Financing Transaction, a Provider requires a Recipient to pay off the balance of an existing Commercial Financing Transaction, from the same Provider, the Provider must disclose the following:

1. ***Amount of New Commercial Financing to Pay Off Existing Commercial Financing Transaction.***
   - The amount of the new commercial financing that is used to pay off the portion of the existing Commercial Financing Transaction that consists of prepayment charges required to be paid and any unpaid interest expense that was not forgiven at the time of renewal.
   - For financing for which the total repayment amount is calculated as a fixed amount, the prepayment charge = (the original finance charge x the amount of the renewal used to pay off existing financing as a percentage of the total repayment amount) - any portion of the total repayment amount forgiven by the provider at the time of prepayment.
     - » If the amount > 0, the amount shall be the answer to the following question:
     - » “Does the renewal financing include any amount that is used to pay unpaid Finance Charge or fees, also known as double dipping?
     - » Yes, {enter amount}.
     - » If the amount = 0, the answer would be No.”
2. ***Disbursement Amount Reduced to Pay Down Unpaid Outstanding Balance.*** If the disbursement amount will be reduced to pay down any unpaid portion of the outstanding balance, the actual dollar amount by which the disbursement amount will be reduced.

WHAT SIGNATURES MUST A PROVIDER GET FROM A RECIPIENT?

A Provider must get a Recipient's signature on all disclosures required to be given to the Recipient under this Bill before authorizing the Recipient to proceed further with a Commercial Financing Transaction application.

A signature may be an electronic signature.

CAN A PROVIDER PROVIDE ADDITIONAL INFORMATION AND DISCLOSURES TO A RECIPIENT?

1. ***Yes. However,*** the additional information may not be included in the foregoing disclosures required by this Bill.
2. ***A provider may not present*** as a "rate" any additional metrics of financing cost disclosed to a recipient if they are not the APR or annual interest rate.
3. ***The term "interest" may only be used*** to describe annualized percentage rates, such as the annual interest rate.
4. ***If a Provider states a rate of finance charge*** or financing amount to a Recipient for an application for a Commercial Financing Transaction, the Provider must also state the rate as an "Annual Percentage Rate,: using that term or the abbreviation "APR.

CAN THE NEW YORK SUPERINTENDENT OF FINANCIAL INSTITUTIONS MAKE REGULATIONS TO ADMINISTER THIS BILL?

Yes. The rules will include regulations to:

1. ***Help calculate*** any metric required to be disclosed to a recipient,
2. ***Develop the format*** of disclosures to help Recipients compare financing options,
3. ***Define terms*** used in this Bill, and
4. ***Enforce this Bill.***

ARE THERE PENALTIES FOR VIOLATING THE REQUIREMENTS?

Yes. A Provider may be ordered to pay a civil penalty of up to:

1. ***$2,000 for each violation, and***
2. ***$10,000 for each willful violation***

A permanent or preliminary injunction may also be issued for a knowing violation.