

Senate Bill 90

By: Senators Dixon of the 45th, Gooch of the 51st, Albers of the 56th, Still of the 48th and Kennedy of the 18th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling
2 and other trade practices, so as to provide for commercial financing disclosures; to require
3 certain persons who provide commercial financing transactions to make certain disclosures;
4 to provide for penalties; to provide for applicability; to provide for definitions; to provide for
5 related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other
9 trade practices, is amended by adding a new Code section to read as follows:

10 "10-1-393.18.

11 (a) As used in this Code section, the term:

12 (1) 'Accounts receivable purchase transaction' means a transaction in which a business
13 forwards or otherwise sells to a person all or a portion of the business's accounts, as
14 defined in Code Section 11-9-102, or payment intangibles, as defined in Code Section
15 11-9-102, at a discount to the accounts' or payment intangibles' expected value.

16 (2) 'Advance fee' means any consideration which is assessed or collected prior to the
17 closing of a commercial financing transaction by a broker.

18 (3) 'Broker' means a person who, for compensation or the expectation of compensation,
19 arranges a commercial financing transaction between a third party and a business in the
20 state that would, if executed, be binding upon that third party and communicates that
21 offer to a business located in this state. Such term excludes a 'provider,' and any
22 individual or entity whose compensation is not based or dependent upon on the terms of
23 the specific commercial financing transaction obtained or offered.

24 (4) 'Business' means a private enterprise carried on for the purpose of gain or economic
25 profit.

26 (5)(A) 'Business purpose transaction' means a transaction from which the resulting
27 proceeds that a business receives are:

28 (i) Provided to the business; or

29 (ii) Intended to be used to carry on the business.

30 (B) Such term shall not include a transaction from which the resulting proceeds are
31 intended to be used for personal, family, or household purposes.

32 (C) For purposes of determining whether a transaction is a business purpose
33 transaction, a provider may rely on a written statement of intended purpose, signed by
34 an individual authorized to sign on behalf of the business. Such written statement may
35 be contained in an application, agreement, or other document signed by an individual
36 authorized to sign on behalf of the business.

37 (6) 'Commercial financing transaction' means a business purpose transaction:

38 (A) Under which a person extends a business a commercial loan or a commercial
39 open-end credit plan; or

40 (B) That is an accounts receivable purchase transaction.

41 (7) 'Commercial loan' means a loan to a business, regardless of whether the loan is
42 secured.

43 (8) 'Commercial open-end credit plan' means commercial financing extended to a
44 business on terms under which:

45 (A) The creditor reasonably contemplates repeat transactions; and

46 (B) Subject to any limit set by the creditor, the amount of financing that the creditor
47 may extend to the business during the term of the plan is made available to the extent
48 that any outstanding balance is repaid.

49 (9) 'Motor vehicle dealer' means a dealer as defined in Code Section 40-2-39 or a used
50 motor vehicle dealer as defined in Code Section 43-47-2.

51 (10) 'Provider' means a person who consummates more than five commercial financing
52 transactions in this state during any calendar year and includes, but is not limited to, a
53 person who, under a written agreement with a depository institution, offers one or more
54 commercial financing products provided by the depository institution via an online
55 platform that the person administers.

56 (b) The provisions of this Code section shall not apply to:

57 (1) A provider that is a depository institution;

58 (2) A provider that is:

59 (A)(i) A subsidiary of a depository institution; or

60 (ii) A service corporation for a depository institution; and

61 (B) Regulated by a federal banking agency;

62 (3) A provider that is regulated under the federal Farm Credit Act, 12 U.S.C. Section
63 2001, et seq.;

64 (4) A provider that is licensed as a money transmitter in accordance with Article 4 of
65 Chapter 1 of Title 7;

66 (5) A provider that consummates five or fewer commercial financing transactions in the
67 state during any 12 month period;

68 (6) A commercial financing transaction secured by real property;

- 69 (7) A commercial financing transaction that is a lease as defined in Code Section
70 11-2A-103;
- 71 (8) A commercial financing transaction that is a purchase money obligation as defined
72 in Code Section 11-9-103;
- 73 (9) A commercial financing transaction that:
- 74 (A) Involves a commercial loan or a commercial open-end credit plan;
- 75 (B) Is \$50,000.00 or more; and
- 76 (C) Extends the commercial loan or the commercial open-end credit plan to:
- 77 (i) A motor vehicle dealer or the motor vehicle dealer's affiliate; or
- 78 (ii) A motor vehicle rental company as defined in Code Section 40-2-167 or the
79 motor vehicle rental company's affiliate;
- 80 (10) A commercial financing transaction offered by a person in connection with the sale
81 of a product or service that:
- 82 (A) The person manufactures, licenses, or distributes; or
- 83 (B) The person's parent company or the person's owned and controlled subsidiary
84 manufactures, licenses, or distributes; or
- 85 (11) A commercial financing transaction of more than \$1 million.
- 86 (c) For purposes of Chapter 1 of Title 7, a provider's characterization of an accounts
87 receivable purchase transaction as a purchase shall be conclusive that the accounts
88 receivable purchase transaction is not a loan or a transaction for the use, forbearance, or
89 detention of money.
- 90 (d) For purposes of Chapter 1 of Title 7, a provider extending a specific offer for a
91 commercial financing transaction on behalf of a depository institution shall not be
92 construed to mean that the provider engaged in lending or financing or originated that loan
93 or financing.

94 (e)(1) Before consummating a commercial financing transaction, a provider shall
95 disclose the terms of the commercial financing transaction in accordance with this Code
96 section.

97 (2) Only one disclosure must be provided for each commercial financing transaction, and
98 a disclosure is not required as a result of the modification, forbearance, or change to a
99 consummated commercial financing transaction.

100 (3) A provider shall disclose the following information in connection with each
101 commercial financing transaction:

102 (A) The total amount of funds provided to the business under the terms of the
103 commercial financing transaction;

104 (B) The total amount of funds disbursed to the business under the terms of the
105 commercial financing transaction, if less than the amount described in
106 subparagraph (A) of this paragraph, as a result of any fees deducted or withheld at
107 disbursement, any amount paid to the provider to satisfy a prior balance, and any
108 amount paid to a third party on behalf of the business;

109 (C) The total amount to be paid to the provider under the terms of the commercial
110 financing transaction;

111 (D) The total dollar cost of the commercial financing transaction, calculated by finding
112 the difference between:

113 (i) The amount described in subparagraph (A) of this paragraph; and

114 (ii) The amount described in subparagraph (C) of this paragraph;

115 (E)(i) The manner, frequency, and amount of each payment; or

116 (ii) If the amount of each payment may vary, the manner, frequency, and estimated
117 amount of the initial payment; and

118 (F) A statement of whether there are any costs or discounts associated with prepayment
119 under the commercial financing transaction, including a reference to the paragraph in
120 the commercial financing transaction agreement that creates each cost or discount.

121 (4) The commercial financing transaction agreement shall include a description of the
122 methodology for calculating any variable payment amount and the circumstances that
123 may cause a payment amount to vary.

124 (5) The provisions of this subsection shall apply to any commercial financing transaction
125 consummated on or after January 1, 2024.

126 (f) No broker shall:

127 (1) Assess, collect, or solicit an advance fee from a business to provide services as a
128 broker; provided, however, that nothing contained in this paragraph shall preclude a
129 broker from soliciting a potential business to pay for, or preclude a potential business
130 from paying for, actual services necessary to apply for a commercial financing
131 transaction, including, but not limited to, a credit check or an appraisal of security, where
132 such payment is made by check or money order payable to a party independent of the
133 broker;

134 (2) Make or use any false or misleading representations or omit any material fact in the
135 offer or sale of the services of a broker or engage, directly or indirectly, in any act that
136 operates or would operate as fraud or deception upon any person in connection with the
137 offer or sale of the services of a broker, notwithstanding the absence of reliance by the
138 buyer;

139 (3) Make or use any false or deceptive representation in its business dealings; or

140 (4) Offer the services of a broker by making, publishing, disseminating, circulating, or
141 placing before the public within this state an advertisement in a newspaper or other
142 publication or an advertisement in the form of a book, notice, handbill, poster, sign,
143 billboard, bill, circular, pamphlet, letter, photograph, or motion picture or an
144 advertisement circulated by radio, loud-speaker, telephone, television, telegraph, or in
145 any other way, where said offer or advertisement does not disclose the name, business
146 address, and telephone number of the broker. For purposes of this paragraph, the broker
147 shall disclose the actual address and telephone number of the business of the broker in

148 addition to the address and telephone number of any forwarding service that the broker
149 may use.

150 (g) The Attorney General may:

151 (1) Receive and act on complaints;

152 (2) Take action designed to obtain voluntary compliance with this Code section; and

153 (3) Commence administrative or judicial proceedings on the Attorney General's own
154 initiative to enforce compliance with this Code section.

155 (h) A person who violates a provision of this Code section is subject to a civil penalty of
156 \$500.00 per violation, not to exceed \$20,000.00 for all violations arising from the use of
157 the same transaction documentation or materials.

158 (i) A person who violates a provision of this Code section after receiving written notice
159 of a prior violation is subject to a civil penalty of \$1,000.00 per violation, not to exceed
160 \$50,000.00 for all violations arising from the use of the same transaction documentation
161 or materials.

162 (j) Nothing in this Code section creates a private right of action against any person based
163 on failure to comply with the provisions of this Code section.

164 (k) A violation of this Code section shall not affect the enforceability of any underlying
165 agreement."

166 **SECTION 2.**

167 All laws and parts of laws in conflict with this Act are repealed.