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MEMORANDUM

To: House Committee on Financial Institutions and Pensions
From: Office of Revisor of Statutes
Date: March 13, 2024
Subject: **SB 345: Enacting the commercial financing disclosure act.**

Senate Bill No. 345 enacts five new sections of law known as the commercial financing disclosure act.

Section 1 names the commercial financing disclosure act and provides definitions of terms used throughout the act.

"Commercial financing transaction" means any commercial loan, accounts receivable purchase transaction and commercial open-end credit plan when the transaction is a business purpose transaction.

"Broker" means any person who, for compensation or the expectation of compensation:

- (i) Arranges a commercial financing product transaction between a third party that, if executed, such transaction would be binding upon such third party; and
- (ii) communicates such transaction to a business in this state.
- (iii) "Broker" does not include a provider or any individual or entity whose compensation is not based or dependent upon the terms of the specific commercial financing product obtained or offered.

"Business purpose transaction" means any transaction in which the proceeds resulting therefrom are provided to a business or are intended to be used to carry on a business and are not for personal, family or household purposes.

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

Section 2 requires that before consummating a commercial financing transaction, a provider shall disclose to the business the terms of such commercial financing transaction. Providers shall disclose the total amount of funds provided to the business under such commercial financing transaction, the total amount of funds disbursed to such business if less

than the total amount provided, the total amount to be paid to such provider, the manner, frequency and amount of each payment and a statement of whether there are any costs or discounts associated with prepayment of such commercial financing transaction.

Section 3 lists the exemptions from the commercial financing disclosure act.

Section 4 provides certain prohibitions placed on brokers, who arrange commercial financing product transactions between a third party and a business in the state.

Section 5 provides penalties for violations of the act. Violations of the act shall be punishable by a civil penalty of \$500 per violation, but not to exceed \$20,000 for all aggregated violations. Any person who violates the provisions of the act after receiving written notice of a prior violation from the attorney general shall be punishable by a civil penalty of \$1,000 per violation, but not to exceed \$50,000 for all aggregated violations. A violation shall not affect the validity of the underlying agreement. This section also provides that the act shall not create a private right of action against any person based upon compliance or noncompliance with the act and that the authority to enforce compliance with the act shall be vested exclusively with the attorney general.

The Senate made no amendments to SB 345 and passed the bill by a vote of 38-2 on February 22, 2024.