

SESSION OF 2024

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 345**

As Recommended by Senate Committee on  
Financial Institutions and Insurance

**Brief\***

SB 345 would create the Commercial Financing Disclosure Act (Act), pertaining to certain commercial financing transactions between a provider and a business. The bill would require the disclosure of certain commercial financing product transaction information, provide for civil penalties for violations of the Act, and authorize the Attorney General to enforce the Act.

***Definitions (Section 1)***

The bill would define multiple terms used in the Act, including:

- “Account,” which would include:
  - A right to payment of a monetary obligation, whether or not earned by performance, for:
    - Property that has been or is to be sold, leased, licensed, assigned; or otherwise disposed of;
    - Services rendered or to be rendered;
    - A policy of insurance issued or to be issued;
    - A secondary obligation incurred or to be incurred;

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Energy provided or to be provided;
- The use or hire of a vessel under a charter or other contract;
- Arising out of the use of a credit card or charge card or information contained on or for the use of such card; or
- Winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate such lottery or game by a state or governmental unit of a state; and
  - Healthcare insurance receivables;
- “Account” would not include:
  - Rights to payment evidence by chattel paper or an instrument;
  - Commercial tort claims;
  - Deposit accounts;
  - Investment property;
  - Letter-of-credit rights or letters of credit; or
  - Rights to payment of moneys advanced or sold other than rights arising out of the use of a credit card or charge card or information contained on or for use with such card;
- “Accounts receivable purchase transaction” would mean any transaction in which a business forwards or otherwise sells to a provider all or a portion of accounts of such business, cash receipts, or payment intangibles at a discount to the expected value of such accounts or payment intangibles. The provider’s characterization of an accounts

receivable purchase transaction as a purchase would be conclusive that such accounts receivable transaction is not a loan or a transaction for the use, forbearance, or detention of money;

- “Broker” would mean any person who, for compensation, or the expectation of compensation:
  - Arranges for a commercial financing product transaction between a third party that, if executed, such transaction would be binding upon such third party; and
  - Communicates such transaction to a business in this state;
- “Broker” would 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” would mean an individual, group of individuals, sole proprietorship, corporation, limited liability company, trust, estate, cooperative, association, limited partnership, or general partnership engaged in a business activity;
- “Commercial financing facility” would mean a provider’s plan for purchasing multiple accounts receivable from the recipient over a period of time pursuant to an agreement that sets forth the terms and conditions governing the use of the facility;
- “Commercial financing transaction” would mean any commercial loan, accounts receivable purchase transaction, and commercial open-end credit plan when the transaction is a business purpose transaction; and
- “Provider” would mean a person who consummates more than five commercial financing transactions to a business located in the state in a

calendar year. "Provider" would not include 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.

The bill also would define "business purpose transaction," "commercial loan," "commercial open-end credit plan," "depository institution," "general intangible," "payment intangible," and "person."

***Required Commercial Financing Transaction Disclosures  
(Section 2)***

Before, or at the time of consummating a commercial financing transaction, the bill would require a provider to disclose to the business the terms of such transaction. Only one disclosure would be required for each commercial financing transaction. Disclosure would not be required when a modification, forbearance, or change to a consummated commercial financing transaction occurs.

The bill would require a provider to disclose the following with each commercial financing transaction, with each disclosure labeled using the terms in quotations below:

- The "total amount of funds provided";
- The "total amount of funds disbursed," if less than the total amount of fund provided;
- The "total of payments" to such provider;
- The "total dollar cost of financing," which would be determined by subtracting the total amount of funds provided from the total of payments and would include any fees or charges deducted by the provider from the total amount of funds provided;

- The manner, frequency, and amount of each “payment,” and, if such payments vary, the provider would be required to instead disclose the manner, frequency, and estimated amount of the initial payment and label such disclosure as “estimated payments.” The bill would require a description of the methodology for calculating any variable payment and the circumstances for when payments could vary to be included in the commercial financing transaction agreement; and
- A statement of whether there are any costs or discounts associated with prepayment of such commercial financing transaction, including a reference to the paragraph in the agreement that creates a contractual right to “prepayment.”

### ***Commercial Financing Facility Disclosures (Section 2)***

The bill would allow a provider that consummates a commercial financing facility to provide disclosures required by the Act that are based on an example of a transaction that could occur under the agreement. The bill would require the example to be based on an account receivable total face amount owed of \$10,000. Only one disclosure would be required for each commercial financing facility. Disclosure would not be required when a modification, forbearance, or change to the facility occurs. A new disclosure would not be required each time accounts receivables are purchased under the facility.

### ***Exemptions from the Act (Section 3)***

The bill would provide that the Act would not apply to:

- A provider that is a depository institution or its parent company or a subsidiary or service corporation that is:

- Owned and controlled by a depository institution; and
- Regulated by a federal banking agency;
- A provider that is a lender regulated under the federal Farm Credit Act;
- A commercial financing transaction that is:
  - Secured by real property;
  - A lease; or
  - A purchase money obligation that is incurred as all or part of the price of the collateral or for value given to enable the business to acquire rights in or the use of such collateral if such value is so used;
- A commercial financing transaction in which the recipient is a motor vehicle dealer or a vehicle rental company, or an affiliate of a motor vehicle dealer or a vehicle rental company, or an affiliate of such company pursuant to a commercial loan or commercial open-end credit plan of at least \$50,000 or a commercial financing transaction offered by a person in connection with the sale or lease of products or services that such person manufactures, licenses, or distributes or whose parent company or any of such parent company's directly or indirectly owned and controlled subsidiaries manufactures, licenses, or distributes;
- A provider that is licensed as a money transmitter in accordance with the Kansas Money Transmitter Act or the law of any other state, district, territory, or commonwealth of the U.S.;
- A provider that consummates not more than 5 commercial financing transaction transactions in Kansas in a 12-month period; or

- A commercial financing transaction of more than \$500,000.

#### ***Broker Prohibitions (Section 4)***

The bill would prohibit a broker from:

- Assessing, collecting, or soliciting an advance fee from a business to provide broker services. This would not preclude a broker from soliciting a potential business to pay for, or preclude a potential business from paying for, actual services necessary to apply for a commercial financing transaction. Actual services may include, but not be limited to, a credit check or an appraisal of security, where such payment is made by check or money order payable to a party independent of the broker;
- Making or using any false or misleading representations or omitting any material fact in the offer or sale of broker services or engaging, directly or indirectly, in any act that operates or would operate as fraud or deception upon any person in connection with the offer or sale of broker services, regardless of the absence of reliance by the buyer; or
- Making or using any false or deceptive representation in its business dealings.

#### ***Civil Penalties for Violations of Act (Section 5)***

The bill would require violations of the Act to be punishable by a civil penalty of \$500 per violation, but not to exceed \$20,000 for all aggregated violations. Any person who received written notice of a prior violation from the Attorney General and subsequently violates the Act would be punished by a civil penalty of \$1,000 per violation, but not to exceed \$50,000 for all aggregated violations.

The bill would provide that the enforceability or validity of an underlying agreement would not be affected by violations of the Act.

The bill would provide that the Act would not create a separate right of action against any person based upon compliance or noncompliance with the provisions of the Act.

The bill would require the authority to enforce compliance with the Act to be vested exclusively with the Attorney General.

### **Background**

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Longbine. The bill was referred to the Senate Committee on Financial Institutions and Insurance.

### ***Senate Committee on Financial Institutions and Insurance***

In the Senate Committee hearing, **proponent** testimony was provided by a representative of the Revenue Based Coalition. The representative indicated the bill would standardize disclosures for non-bank financing provided to Kansas small businesses by codifying best practices and would help eliminate bad actors. The representative noted responsible providers already relay this information to help businesses easily compare providers to find the most advantageous financing for their business. The representative stated the bill would place basic guardrails on commercial financial brokers by prohibiting brokers from collecting an “advance fee” prior to closing a financial transaction and from engaging in false, deceptive, or misleading practices.



Opponent written-only testimony was provided by representatives of AltCap and the Responsible Business Lending Coalition. No other testimony was provided.

### **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget on the bill, the Office of the Attorney General notes it is unable to determine how many cases would require action and the additional resources needed to handle those cases if the provisions of the Act were enacted. However, the agency estimates it would require a minimum of 1.0 Assistant Attorney General FTE position at a cost of \$104,442 from the State General Fund (SGF) for FY 2025.

The Office of Judicial Administration indicates enactment of the bill could increase the number of cases filed in district courts because the bill would allow civil penalties to be filed. This would increase the time spent by district court judicial and nonjudicial staff in processing, researching, and hearing cases. Passage of the bill could result in the collection of docket fees that would be deposited into the SGF. However, and exact estimate of expenditures and revenues cannot be estimated.

The Office of the State Bank Commissioner and the State Department of Credit Unions both state the bill would not have a fiscal effect on agency operations.

The Kansas Association of Counties and the League of Kansas Municipalities both state that, under the bill, violations could result in civil penalties that would increase court proceedings; however, any impact would be negligible. Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Commercial Financing Disclosure Act; financial institutions; civil penalties; Attorney General; brokers