

1 **FINANCIAL INSTITUTIONS MODIFICATIONS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Joel Ferry

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts and modifies provisions related to financial institutions.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies the definition of "control" for purposes of the Financial Institutions Act;
- 13 ▶ enacts the Commercial Financing Registration and Disclosure Act, which requires

14 persons who provide certain commercial financing products to:

- 15 • register with the Department of Financial Institutions; and
- 16 • make certain disclosures in connection with each commercial financing product;

17 and

- 18 ▶ provides penalties for failure to comply with the registration and disclosure

19 requirements.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **7-1-103**, as last amended by Laws of Utah 2017, Chapter 169

27 **7-1-401**, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1

28 ENACTS:

29 **7-1-103.5**, Utah Code Annotated 1953

- 30 7-27-101, Utah Code Annotated 1953
- 31 7-27-102, Utah Code Annotated 1953
- 32 7-27-201, Utah Code Annotated 1953
- 33 7-27-202, Utah Code Annotated 1953
- 34 7-27-301, Utah Code Annotated 1953



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

37 Section 1. Section 7-1-103 is amended to read:

38 **7-1-103. Definitions.**

39 As used in this title:

40 (1) (a) "Bank" means a person authorized under the laws of this state, another state, or
41 the United States to accept deposits from the public.

42 (b) "Bank" does not include:

- 43 (i) a federal savings and loan association or federal savings bank;
- 44 (ii) an industrial bank subject to Chapter 8, Industrial Banks;
- 45 (iii) a federally chartered credit union; or
- 46 (iv) a credit union subject to Chapter 9, Utah Credit Union Act.

47 (2) "Banking business" means the offering of deposit accounts to the public and the
48 conduct of such other business activities as may be authorized by this title.

49 (3) (a) "Branch" means a place of business of a financial institution, other than its main
50 office, at which deposits are received and paid.

51 (b) "Branch" does not include:

- 52 (i) an automated teller machine, as defined in Section 7-16a-102;
- 53 (ii) a point-of-sale terminal, as defined in Section 7-16a-102; or
- 54 (iii) a loan production office under Section 7-1-715.

55 (4) "Commissioner" means the Commissioner of Financial Institutions.

56 (5) ~~["Control"]~~ Subject to Section 7-1-103.5, "control" means the power, directly or
57 indirectly, or through or in concert with one or more persons, to:

- 58 (a) direct or exercise a controlling influence over:
- 59 (i) the management or policies of a financial institution; or
- 60 (ii) the election of a majority of the directors or trustees of an institution; or
- 61 (b) vote [~~20%~~] 25% or more of any class of voting securities of a financial institution
- 62 [~~by an individual, or~~].
- 63 [~~(c) vote more than 10% of any class of voting securities of a financial institution by a~~
- 64 ~~person other than an individual.~~]
- 65 (6) "Credit union" means a cooperative, nonprofit association incorporated under:
- 66 (a) Chapter 9, Utah Credit Union Act; or
- 67 (b) 12 U.S.C. Sec. 1751 et seq., Federal Credit Union Act, as amended.
- 68 (7) "Department" means the Department of Financial Institutions.
- 69 (8) "Depository institution" means a bank, savings and loan association, savings bank,
- 70 industrial bank, credit union, or other institution that:
- 71 (a) holds or receives deposits, savings, or share accounts;
- 72 (b) issues certificates of deposit; or
- 73 (c) provides to its customers other depository accounts that are subject to withdrawal
- 74 by checks, drafts, or other instruments or by electronic means to effect third party payments.
- 75 (9) (a) "Depository institution holding company" means:
- 76 (i) a person other than an individual that:
- 77 (A) has control over a depository institution; or
- 78 (B) becomes a holding company of a depository institution under Section [7-1-703](#); or
- 79 (ii) a person other than an individual that the commissioner finds, after considering the
- 80 specific circumstances, is exercising or is capable of exercising a controlling influence over a
- 81 depository institution by means other than those specifically described in this section.
- 82 (b) Except as provided in Section [7-1-703](#), a person is not a depository institution
- 83 holding company solely because it owns or controls shares acquired in securing or collecting a
- 84 debt previously contracted in good faith.
- 85 (10) "Financial institution" means an institution subject to the jurisdiction of the

86 department because of this title.

87 (11) (a) "Financial institution holding company" means a person, other than an
88 individual that has control over a financial institution or a person that becomes a financial
89 institution holding company under this chapter, including an out-of-state or foreign depository
90 institution holding company.

91 (b) Ownership of a service corporation or service organization by a depository
92 institution does not make that institution a financial institution holding company.

93 (c) A person holding 10% or less of the voting securities of a financial institution is
94 rebuttably presumed not to have control of the institution.

95 (d) A trust company is not a holding company solely because it owns or holds 20% or
96 more of the voting securities of a financial institution in a fiduciary capacity, unless the trust
97 company exercises a controlling influence over the management or policies of the financial
98 institution.

99 (12) "Foreign depository institution" means a depository institution chartered or
100 authorized to transact business by a foreign government.

101 (13) "Foreign depository institution holding company" means the holding company of a
102 foreign depository institution.

103 (14) "Home state" means:

104 (a) for a state chartered depository institution, the state that charters the institution;

105 (b) for a federally chartered depository institution, the state where the institution's main
106 office is located; and

107 (c) for a depository institution holding company, the state in which the total deposits of
108 all depository institution subsidiaries are the largest.

109 (15) "Host state" means:

110 (a) for a depository institution, a state, other than the institution's home state, where the
111 institution maintains or seeks to establish a branch; and

112 (b) for a depository institution holding company, a state, other than the depository
113 institution holding company's home state, where the depository institution holding company

114 controls or seeks to control a depository institution subsidiary.

115 (16) "Industrial bank" means a corporation or limited liability company conducting the
116 business of an industrial bank under Chapter 8, Industrial Banks.

117 (17) "Industrial loan company" means the same as that term is defined in Section
118 7-8-21.

119 (18) "Insolvent" means the status of a financial institution that is unable to meet its
120 obligations as they mature.

121 (19) "Institution" means:

- 122 (a) a corporation;
- 123 (b) a limited liability company;
- 124 (c) a partnership;
- 125 (d) a trust;
- 126 (e) an association;
- 127 (f) a joint venture;
- 128 (g) a pool;
- 129 (h) a syndicate;
- 130 (i) an unincorporated organization; or
- 131 (j) any form of business entity.

132 (20) "Institution subject to the jurisdiction of the department" means an institution or
133 other person described in Section 7-1-501.

134 (21) "Liquidation" means the act or process of winding up the affairs of an institution
135 subject to the jurisdiction of the department by realizing upon assets, paying liabilities, and
136 appropriating profit or loss, as provided in Chapter 2, Possession of Depository Institution by
137 Commissioner, and Chapter 19, Acquisition of Failing Depository Institutions or Holding
138 Companies.

139 (22) "Liquidator" means a person, agency, or instrumentality of this state or the United
140 States appointed to conduct a liquidation.

141 (23) (a) "Money services business" includes:

- 142 (i) a check casher;
- 143 (ii) a deferred deposit lender;
- 144 (iii) an issuer or seller of traveler's checks or money orders; and
- 145 (iv) a money transmitter.
- 146 (b) "Money services business" does not include:
- 147 (i) a bank;
- 148 (ii) a person registered with, and functionally regulated or examined by the Securities
- 149 Exchange Commission or the Commodity Futures Trading Commission, or a foreign financial
- 150 agency that engages in financial activities that, if conducted in the United States, would require
- 151 the foreign financial agency to be registered with the Securities Exchange Commission or the
- 152 Commodity Futures Trading Commission; or
- 153 (iii) an individual who engages in an activity described in Subsection (23)(a) on an
- 154 infrequent basis and not for gain or profit.
- 155 (24) "Negotiable order of withdrawal" means a draft drawn on a NOW account.
- 156 (25) (a) "NOW account" means a savings account from which the owner may make
- 157 withdrawals by negotiable or transferable instruments for the purpose of making transfers to
- 158 third parties.
- 159 (b) A "NOW account" is not a demand deposit.
- 160 (c) The owner of a NOW account or any third party holder of an instrument requesting
- 161 withdrawal from the account does not have a legal right to make withdrawal on demand.
- 162 (26) "Out-of-state" means, in reference to a depository institution or depository
- 163 institution holding company, an institution or company whose home state is not Utah.
- 164 (27) "Person" means:
- 165 (a) an individual;
- 166 (b) a corporation;
- 167 (c) a limited liability company;
- 168 (d) a partnership;
- 169 (e) a trust;

- 170 (f) an association;
- 171 (g) a joint venture;
- 172 (h) a pool;
- 173 (i) a syndicate;
- 174 (j) a sole proprietorship;
- 175 (k) an unincorporated organization; or
- 176 (l) any form of business entity.

177 (28) "Receiver" means a person, agency, or instrumentality of this state or the United
178 States appointed to administer and manage an institution subject to the jurisdiction of the
179 department in receivership, as provided in Chapter 2, Possession of Depository Institution by
180 Commissioner, and Chapter 19, Acquisition of Failing Depository Institutions or Holding
181 Companies.

182 (29) "Receivership" means the administration and management of the affairs of an
183 institution subject to the jurisdiction of the department to conserve, preserve, and properly
184 dispose of the assets, liabilities, and revenues of an institution in possession, as provided in
185 Chapter 2, Possession of Depository Institution by Commissioner, and Chapter 19, Acquisition
186 of Failing Depository Institutions or Holding Companies.

187 (30) "Savings account" means a deposit or other account at a depository institution that
188 is not a transaction account.

189 (31) "Savings and loan association" means:

- 190 (a) a federal savings and loan association; and
- 191 (b) an out-of-state savings and loan association.

192 (32) "Service corporation" or "service organization" means a corporation or other
193 business entity owned or controlled by one or more financial institutions that is engaged or
194 proposes to engage in business activities related to the business of financial institutions.

195 (33) "State" means, unless the context demands otherwise:

- 196 (a) a state;
- 197 (b) the District of Columbia; or

198 (c) the territories of the United States.

199 (34) "Subsidiary" means a business entity under the control of an institution.

200 (35) "Technology service provider" means a person that provides a data processing
201 service or activity that supports the financial services or Internet related services of a depository
202 institution subject to the jurisdiction of the department, including supporting:

203 (a) lending;

204 (b) money transfers;

205 (c) fiduciary activities;

206 (d) trading activities;

207 (e) deposit taking;

208 (f) web services and electronic bill payments;

209 (g) mobile applications;

210 (h) system and software development and maintenance; and

211 (i) security monitoring.

212 (36) (a) "Transaction account" means a deposit, account, or other contractual
213 arrangement in which a depositor, account holder, or other customer is permitted, directly or
214 indirectly, to make withdrawals by:

215 (i) check or other negotiable or transferable instrument;

216 (ii) payment order of withdrawal;

217 (iii) telephone transfer;

218 (iv) other electronic means; or

219 (v) any other means or device for the purpose of making payments or transfers to third
220 persons.

221 (b) "Transaction account" includes:

222 (i) demand deposits;

223 (ii) NOW accounts;

224 (iii) savings deposits subject to automatic transfers; and

225 (iv) share draft accounts.

226 (37) "Trust company" means a person authorized to conduct a trust business, as
227 provided in Chapter 5, Trust Business.

228 (38) "Utah depository institution" means a depository institution whose home state is
229 Utah.

230 (39) "Utah depository institution holding company" means a depository institution
231 holding company whose home state is Utah.

232 Section 2. Section 7-1-103.5 is enacted to read:

233 **7-1-103.5. Control.**

234 (1) There is a rebuttable presumption that a person has control of a financial institution
235 if the person has the power, directly or indirectly, or through or in concert with one or more
236 persons, to vote more than 10% but less than 25% of any class of voting securities of a
237 financial institution.

238 (2) Except as provided in rule made under Subsection (3), a person seeking to rebut a
239 presumption of control described in Subsection (1) shall submit an application to the
240 commissioner.

241 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
242 commissioner may make rules that specify:

243 (a) the procedures and requirements for an application described in Subsection (2); and

244 (b) the conditions under which a person may obtain a determination that the person is
245 not in control of a financial institution without filing an application in accordance with
246 Subsection (2).

247 (4) The commissioner has sole discretion to determine whether a person rebuts a
248 presumption of control under this section.

249 Section 3. Section 7-1-401 is amended to read:

250 **7-1-401. Fees payable to commissioner.**

251 (1) Except for an out-of-state depository institution with a branch in Utah, a depository
252 institution under the jurisdiction of the department shall pay an annual fee:

253 (a) computed by averaging the total assets of the depository institution shown on each

254 quarterly report of condition for the depository institution for the calendar year immediately
255 preceding the date on which the annual fee is due under Section 7-1-402; and

256 (b) at the following rates:

257 (i) on the first \$5,000,000 of these assets, the greater of:

258 (A) 65 cents per \$1,000; or

259 (B) \$500;

260 (ii) on the next \$10,000,000 of these assets, 35 cents per \$1,000;

261 (iii) on the next \$35,000,000 of these assets, 15 cents per \$1,000;

262 (iv) on the next \$50,000,000 of these assets, 12 cents per \$1,000;

263 (v) on the next \$200,000,000 of these assets, 10 cents per \$1,000;

264 (vi) on the next \$300,000,000 of these assets, 6 cents per \$1,000; and

265 (vii) on all amounts over \$600,000,000 of these assets, 2 cents per \$1,000.

266 (2) A financial institution with a trust department shall pay a fee determined in
267 accordance with Subsection (7) for each examination of the trust department by a state
268 examiner.

269 (3) Notwithstanding Subsection (1), a credit union in its first year of operation shall
270 pay a basic fee of \$25 instead of the fee required under Subsection (1).

271 (4) A trust company that is not a depository institution or a subsidiary of a depository
272 institution holding company shall pay:

273 (a) an annual fee of \$500; and

274 (b) an additional fee determined in accordance with Subsection (7) for each
275 examination by a state examiner.

276 (5) Any person or institution under the jurisdiction of the department that does not pay
277 a fee under Subsections (1) through (4) shall pay:

278 (a) an annual fee of \$200; and

279 (b) an additional fee determined in accordance with Subsection (7) for each
280 examination by a state examiner.

281 (6) A person filing an application or request under Section 7-1-503, 7-1-702, 7-1-703,

282 7-1-704, 7-1-713, 7-5-3, or 7-18a-202 shall pay:

283 (a) (i) a filing fee of \$500 if on the day on which the application or request is filed the
284 person:

285 (A) is a person with authority to transact business as a depository institution, a trust
286 company, or any other person described in Section 7-1-501 as being subject to the jurisdiction
287 of the department; and

288 (B) has total assets in an amount less than \$5,000,000; or

289 (ii) a filing fee of \$2,500 for any person not described in Subsection (6)(a)(i); and

290 (b) all reasonable expenses incurred in processing the application.

291 (7) (a) Per diem assessments for an examination shall be calculated at the rate of \$55
292 per hour:

293 (i) for each examiner; and

294 (ii) per hour worked.

295 (b) For an examination of a branch or office of a financial institution located outside of
296 this state, in addition to the per diem assessment under this Subsection (7), the institution shall
297 pay all reasonable travel, lodging, and other expenses incurred by each examiner while
298 conducting the examination.

299 (8) In addition to a fee under Subsection (5), a person registering under Section
300 7-23-201 [or] 7-24-201, or 7-27-201 shall pay an original registration fee of \$300.

301 (9) In addition to a fee under Subsection (5), a person applying for licensure under
302 Chapter 25, Money Transmitter Act, shall pay an original license fee of \$300.

303 Section 4. Section 7-27-101 is enacted to read:

304 **CHAPTER 27. COMMERCIAL FINANCING REGISTRATION**

305 **AND DISCLOSURE ACT**

306 **Part 1. General Provisions**

307 **7-27-101. Definitions.**

308 As used in this chapter:

309 (1) "Accounts receivable purchase transaction" means a transaction in which a business

310 forwards or otherwise sells to a person all or a portion of the business's accounts, as defined in
311 Section 70A-9a-102, or payment intangibles, as defined in Section 70A-9a-102, at a discount to
312 the accounts' or payment intangibles' expected value.

313 (2) "Broker" means a person who, for compensation or the expectation of
314 compensation, arranges a commercial financing transaction between a third party and a
315 business in the state.

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

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

320 (i) provided to the business; or

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

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

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

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

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

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

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

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

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

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

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

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

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

347 Section 5. Section **7-27-102** is enacted to read:

348 **7-27-102. Application.**

349 The provisions of this chapter do not apply to:

350 (1) a provider that is a depository institution;

351 (2) a provider that is:

352 (a) (i) a subsidiary of a depository institution; or

353 (ii) a service corporation for a depository institution; and

354 (b) regulated by a federal banking agency;

355 (3) a provider that is regulated under the federal Farm Credit Act 12 U.S.C. Sec. 2001
356 et seq.;

357 (4) a provider that is licensed as a money transmitter in accordance with Chapter 25,
358 Money Transmitter Act;

359 (5) a provider that consummates five or fewer commercial financing products in the
360 state during any 12 month period;

361 (6) a commercial financing transaction secured by real property;

362 (7) a commercial financing transaction that is a lease as defined in Section
363 [70A-2a-103](#);

364 (8) a commercial financing transaction that is a purchase-money obligation as defined
365 in Section [70A-9a-103](#);

- 366 (9) a commercial financing transaction that:
- 367 (a) involves a commercial loan or a commercial open-end credit plan;
- 368 (b) is \$50,000 or more; and
- 369 (c) extends the commercial loan or the commercial open-end credit plan to:
- 370 (i) a motor vehicle dealer or the motor vehicle dealer's affiliate; or
- 371 (ii) a motor vehicle rental company as defined in Section [13-48-103](#) or the motor
- 372 vehicle rental company's affiliate;
- 373 (10) a commercial financing transaction offered by a person in connection with the sale
- 374 of a product or service that:
- 375 (a) the person manufactures, licenses, or distributes; or
- 376 (b) the person's parent company or the person's owned and controlled subsidiary
- 377 manufactures, licenses, or distributes; or
- 378 (11) a commercial financing transaction of more than \$1,000,000.

Section 6. Section **7-27-201** is enacted to read:

Part 2. Registration

7-27-201. Registration requirements -- Rulemaking.

- 382 (1) (a) Beginning January 1, 2023, it is unlawful for a person to engage in a
- 383 commercial financing transaction as a provider in Utah or with a Utah resident, unless the
- 384 person:
- 385 (i) registers with the department in accordance with this chapter; and
- 386 (ii) maintains a valid registration.
- 387 (b) An officer or employee of a person required to register under this section is not
- 388 required to register if the person for whom the individual is an officer or employee is
- 389 registered.
- 390 (2) (a) A registration and a renewal of registration expires on December 31 of each
- 391 year.
- 392 (b) To register or renew a registration under this section, a person shall:
- 393 (i) pay an original registration fee established under Subsection [7-1-401\(8\)](#); and

394 (ii) submit a registration statement containing the information described in Subsection
395 (2)(d).

396 (c) To renew a registration under this section, a person shall:

397 (i) pay the annual fee established under Subsection 7-1-401(5); and

398 (ii) submit a renewal statement containing the information described in Subsection
399 (2)(d).

400 (d) A registration or renewal statement shall state:

401 (i) the name of the person;

402 (ii) the name in which the business will be transacted if different from that required in
403 Subsection (2)(d)(i);

404 (iii) the address of the person's principal business office, regardless of whether in the
405 state or outside the state;

406 (iv) the address of each office in this state at which the person engages in commercial
407 financing transactions;

408 (v) if the person engages in commercial financing transactions in this state but does not
409 maintain an office in the state, a brief description of the manner in which the business is
410 conducted;

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

413 (vii) whether there is a conviction of a crime:

414 (A) involving an act of fraud, dishonesty, breach of trust, or money laundering; and

415 (B) with respect to that person, an officer, director, manager, operator, or principal of
416 that person, or an employee of that person engaged in the business described in this chapter;

417 (viii) evidence satisfactory to the department that the person is registered with the
418 Nationwide Multistate Licensing System and Registry; and

419 (ix) any other information required by the rules of the department.

420 (e) (i) The commissioner may impose an administrative fine determined under
421 Subsection (2)(e)(ii) on a person if:

422 (A) the person is required to be registered under this chapter;
423 (B) the person fails to register or renew a registration in accordance with this chapter;
424 (C) the department notifies the person that the person is in violation of this chapter for
425 failure to be registered; and
426 (D) the person fails to register within 30 days after the day on which the person
427 receives the notice described in Subsection (2)(e)(i)(C).
428 (ii) Subject to Subsection (2)(e)(iii), the administrative fine imposed under this
429 Subsection (2)(e) is:
430 (A) \$500 if the person has zero or one office in this state at which the person engages
431 in commercial financing transactions; or
432 (B) if the person has two or more offices in this state at which the person engages in
433 commercial financing transactions, \$500 for each office at which the person engages in
434 commercial financing transactions.
435 (iii) The commissioner may reduce or waive a fine imposed under this Subsection
436 (2)(e) if the person shows good cause.
437 (3) If the information in a registration or renewal statement required under Subsection
438 (2) becomes inaccurate after filing, a person is not required to notify the department until:
439 (a) that person is required to renew the registration; or
440 (b) the department specifically requests earlier notification.
441 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
442 department may make rules consistent with this section:
443 (a) providing for the form, content, and filing of a registration and renewal statement;
444 and
445 (b) providing for the transition of persons registering with the nationwide database.
446 Section 7. Section 7-27-202 is enacted to read:
447 **7-27-202. Disclosures for commercial financing transactions.**
448 (1) (a) Before consummating a commercial financing transaction, a provider shall
449 disclose the terms of the commercial financing transaction in accordance with this section and

450 rules made by the commissioner.

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

453 (i) after any disbursement of funds that occurs after the parties consummate the
454 commercial financing transaction; and

455 (ii) no later than 15 days after the last day of the calendar month in which the
456 disbursement of funds occurs.

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

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

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

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

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

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

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

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

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

472 (f) a statement of whether there are any costs or discounts associated with prepayment
473 under the commercial financing transaction, including a reference to the paragraph in the
474 commercial financing transaction agreement that creates each cost or discount; and

475 (g) any amount of the funds described in Subsection (2)(a) that the provider pays to a
476 broker in connection with the commercial financing transaction.

477 (3) The commercial financing transaction agreement shall include a description of the

478 methodology for calculating any variable payment amount and the circumstances that may
479 cause a payment amount to vary.

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

482 Section 8. Section **7-27-301** is enacted to read:

483 **Part 3. Enforcement**

484 **7-27-301. Penalties.**

485 (1) Subject to the requirements of Title 63G, Chapter 4, Administrative Procedures
486 Act, the department may:

487 (a) receive and act on complaints;

488 (b) take action designed to obtain voluntary compliance with this chapter; or

489 (c) commence administrative or judicial proceedings on the department's own initiative
490 to enforce compliance with this chapter.

491 (2) A person who violates a provision of this chapter is subject to a civil penalty of
492 \$500 per violation, not to exceed \$20,000 for all violations arising from the use of the same
493 transaction documentation or materials.

494 (3) A person who violates a provision of this chapter after receiving written notice of a
495 prior violation is subject to a civil penalty of \$1,000 per violation, not to exceed \$50,000 for all
496 violations arising from the use of the same transaction documentation or materials.

497 (4) Nothing in this chapter creates a private right of action against any person based on
498 failure to comply with the provisions of this chapter.

499 (5) A violation of this chapter does not affect the enforceability of any underlying
500 agreement.