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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Xavier I. Alexander.

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DIGEST

SB 335 Original

2024 Regular Session

Coussan

Proposed law defines the terms "accounts receivable purchase transactions", "advance fee", "broker", "business", "commercial financing facility", "commercial financing transaction", "commercial loan", "commercial open-end credit plan", "depository institution", and "provider".

Proposed law applies to any commercial financing transaction consummated on or after January 1, 2025, and further provides that proposed law does not apply to:

- (1) A provider that is either:
  - (a) A federally insured depository institution or an affiliate or holding company of such institution.
  - (b) A subsidiary or service corporation that is owned or under common ownership with such institution.
- (2) A provider that is a lender regulated under the Farm Credit Act of 1971.
- (3) A commercial financing transaction that is any of the following:
  - (a) Secured by real property.
  - (b) A lease.
  - (c) 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 the collateral if the value is in fact so used.
- (4) A commercial financing transaction in which the recipient is a dealer licensed pursuant to present law or an affiliate of a dealer, or a vehicle lessor or rental company or an affiliate of a 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 its directly or indirectly owned and controlled subsidiaries manufactures, licenses, or distributes.
- (5) A provider that is licensed to engage in money transmission or the sale of checks pursuant to present law or licensed as a money transmitter by any other state, district, territory, or commonwealth of the U.S.

- (6) A provider that consummates no more than five commercial financing transactions in this state in a 12-month period.
- (7) A commercial financing transaction of more than \$500,000.

Proposed law requires a provider that consummates a commercial financing transaction to provide a written disclosure of terms of the commercial financing transaction at or before consummation of the transaction. Further provides that only one disclosure must be provided for each commercial financing transaction, and a disclosure is not required as a result of modification, forbearance, or change to a consummated commercial financing transaction.

Proposed law requires a provider to provide a written disclosure in connection with each financial transaction:

- (1) The total amount of funds provided to the business under the terms of the agreement.
- (2) The total amount of funds disbursed to the business if less than the amount of funds provided to the business, as a result of any fees deducted or withheld at disbursement, any amount paid to the provider to satisfy a prior balance, and any amount paid to the third party on behalf of the business.
- (3) The total amount to be paid to the provider under the terms of the agreement.
- (4) The total dollar cost under the terms of the agreement, calculated by finding the difference between the total amount of funds provided to the business and the total amount to be paid to the provider under the terms of the agreements.
- (5) The manner, frequency, and amount of each payment, or if the amounts vary, the manner and frequency of the payments, the estimated amount of the initial payment, a description of the methodology for calculating any variable payment and the circumstances under which payment may vary.
- (6) Any costs or discounts associated with prepayment, including reference to the provision in the agreement which creates a contractual right related to prepayment.

Proposed law provides that a provider that consummates a commercial financing facility may provide disclosures that are based on an example of a transaction that could occur under the agreement.

Proposed law requires only one disclosure for each commercial financing facility, and a disclosure is not required as a result of a modification, forbearance, or change to the facility. Further provides that a new disclosure is not required each time accounts receivable are purchased under the facility.

Proposed law provides that a broker shall not do any of the following:

- (1) Assess, collect, or solicit an advance fee from a business in exchange for services, except to

pay for, or preclude a business from paying for actual services necessary to apply for a commercial financing transaction, including a credit check or an appraisal of security, if such payment is made by check or money order payable to a party independent of the broker.

- (2) Make or use any false or misleading representation or omit any material fact in the offer or sale of the services of a broker or engage, directly or indirectly, in any act of fraud or deception upon any person in connection with the offer or sale of the services of a broker.
- (3) Make or use any false or deceptive representation in its business dealings.
- (4) Offer the services of a broker in any advertisement without disclosing the actual address and telephone number of the broker or any address or telephone number of the forwarding service the broker uses.

Proposed law gives the attorney general exclusive authority to enforce proposed law.

Proposed law provides that a violation under proposed law is punishable by a fine of \$500 per incident, not to exceed \$20,000 for all aggregated violations.

Proposed law provides that a violation under proposed law subsequent to receiving a written notice of a violation from the attorney general is punishable by a fine of \$1,000 per incident, not to exceed \$50,000 for all aggregated violations.

Proposed law provides that a violation under proposed law does not affect the enforceability or validity of the underlying commercial financing transaction.

Proposed law provides for a private right of action against any person or entity based upon compliance or noncompliance of proposed law.

Effective August 1, 2024.

(Adds R.S. 9:3138.1-3138.6)