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SENATE BILL DRS15235-MCf-135

Short Title: Small Business Truth in Financing. (Public)

Sponsors: Senator Johnson (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENACT THE SMALL BUSINESS TRUTH IN FINANCING ACT.  
3 The General Assembly of North Carolina enacts:  
4 **SECTION 1.** Chapter 53 of the General Statutes is amended by adding a new Article  
5 to read:

6 "Article 26.

7 "Small Business Truth in Financing Act.

8 **"§ 53-440. Short title.**

9 This Article may be cited as the "Small Business Truth in Financing Act."

10 **"§ 53-441. Definitions.**

11 The following definitions apply in this Article:

- 12 (1) Closed-end financing. – A type of commercial financing consisting of a  
13 closed-end extension of credit, secured or unsecured, including equipment  
14 financing. This term includes a commercial financing for a fixed principal  
15 amount and a fixed duration.
- 16 (2) Commercial financing. – A sales-based financing, closed-end financing,  
17 open-end financing, factoring transaction, or other form of financing, the  
18 proceeds of which the recipient does not intend to use primarily for personal,  
19 family, or household purposes. For purposes of determining whether a  
20 financing is a commercial financing, a provider may rely on any statement of  
21 intended purpose by the recipient and is not required to ascertain how the  
22 proceeds are used. The recipient shall make this statement in any of the  
23 following ways:
- 24 a. In a written or electronic record signed by the recipient.
- 25 b. Orally, so long as the provider documents the statement in the  
26 provider's file for the recipient.
- 27 (3) Commissioner. – The North Carolina Commissioner of Banks.
- 28 (4) Control. – The power, directly or indirectly, to direct the management or  
29 policy of an entity, whether through ownership of securities, by contract, or  
30 otherwise. The following persons are presumed to control an entity:
- 31 a. A director, general partner, or executive officer of the entity.
- 32 b. A person that directly or indirectly has ownership of or the power to  
33 vote ten percent (10%) or more of a class of outstanding voting  
34 securities of the entity.
- 35 c. In the case of a limited liability company, a managing member.



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- 1                    d. In the case of a partnership, a person that has the right to receive upon  
2                    dissolution, or has contributed, ten percent (10%) or more of the  
3                    capital of the partnership.
- 4                    (5) Factoring transaction. – A type of commercial financing that includes an  
5                    agreement to purchase, transfer, or sell a legally enforceable claim for  
6                    payment held by a recipient for goods the recipient has supplied, or services  
7                    the recipient has rendered, that have been ordered but for which payment has  
8                    not yet been made.
- 9                    (6) Finance charge. – The cost of financing as a dollar amount. This term includes  
10                   all of the following:
- 11                   a. Any charge payable directly or indirectly by the recipient and imposed  
12                   directly or indirectly by the provider as an incident to or a condition of  
13                   the extension of financing.
- 14                   b. Any charge that would have been included in the finance charge under  
15                   12 C.F.R. § 1026.4, as if that regulation applied.
- 16                   c. Any other charge that the Commissioner determines to be part of the  
17                   finance charge.
- 18                   (7) Financial institution. – Any of the following that is authorized to operate in  
19                   this State:
- 20                   a. A bank, trust company, or industrial loan company having a charter,  
21                   license, or certificate issued by the United States, this State, or any  
22                   other state or jurisdiction of the United States.
- 23                   b. A federally chartered savings and loan association, federal savings  
24                   bank, or federal credit union.
- 25                   c. A savings and loan association, savings bank, or credit union  
26                   organized under the laws of this State or any other state.
- 27                   (8) Open-end financing. – A type of commercial financing consisting of an  
28                   agreement for one or more extensions of open-end credit, secured or  
29                   unsecured. This term includes a commercial financing under a plan in which  
30                   all of the following are true:
- 31                   a. The provider reasonably contemplates repeated transactions.
- 32                   b. The provider may impose a finance charge from time to time on an  
33                   outstanding balance.
- 34                   c. The amount of credit that may be extended to the recipient during the  
35                   term of the plan is generally made available to the extent that any  
36                   outstanding balance is repaid.
- 37                   (9) Person. – An individual, corporation, partnership, limited liability company,  
38                   joint venture, association, joint stock company, trust, or unincorporated  
39                   organization, including a sole proprietorship.
- 40                   (10) Provider. – Any person that extends a specific offer of commercial financing  
41                   to a recipient. This term includes a person that presents a specific offer of  
42                   commercial financing to a recipient on behalf of a third party. This term does  
43                   not include persons exempted under G.S. 53-442.
- 44                   (11) Recipient. – A person residing in or operating in this State that is extended a  
45                   specific offer of commercial financing. This term includes the person's  
46                   authorized representative but does not include a broker.
- 47                   (12) Sales-based financing. – A type of commercial financing in which the  
48                   recipient's repayment is based on a percentage of the recipient's volume of  
49                   sales or revenue in one of the following ways:
- 50                   a. The recipient's payment amounts increase or decrease according to the  
51                   recipient's volume of sales or revenue.

b. The recipient makes regular payments in a fixed amount, but the financing includes a mechanism for reconciling these payments with the percentage of the recipient's volume of sales or revenue.

(13) Specific offer. – The specific terms of commercial financing, including price and amount, that are based on information about the recipient and that, if accepted by the recipient, are binding on the provider, subject to any specific conditions stated in the terms.

**"§ 53-442. Exemptions.**

(a) The following persons are exempt from this Article:

(1) A financial institution, including its holding company, subsidiaries, and affiliates that are under common ownership, direction, or control.

(2) A lender regulated under Chapter 23 (Farm Credit System) of Title 12 of the United States Code.

(3) Any person that makes no more than five commercial financing transactions in this State in a 12-month period.

(4) A motor vehicle dealer, as defined in G.S. 20-286(11), or any affiliate, employee, or agent of a motor vehicle dealer, or any person or entity that provides financing for the purchase of a motor vehicle, as defined in G.S. 20-286(10), or a recreational vehicle, as defined in G.S. 20-4.01(32b).

(5) Any person, such as an equipment dealer or supplier, that is presenting a financing offer on behalf of an exempt person.

(6) Any officer or employee of an entity described in subdivisions (1) through (4) of this subsection when acting within the scope of his or her employment.

(b) A person providing technology services for commercial financing to a person exempted by subsection (a) of this section is also exempt from this Article, so long as the person providing technology services is acting only in that capacity and has no interest in the commercial financing extended by the exempt entity in connection with such program. Technology services include licensing software and providing support services for technology.

(c) The following transactions are exempt from this Article:

(1) A commercial financing transaction secured by real property.

(2) A commercial financing transaction for an amount over five hundred thousand dollars (\$500,000).

(3) A lease, as defined in G.S. 25-2A-103.

(4) The sale, lease, rental, or subscription of a motor vehicle by a motor vehicle dealer licensed under G.S. 20-287.

(d) Consumer finance companies licensed and doing business under Article 15 of Chapter 53 of the General Statutes or doing business pursuant to Chapter 25A of the General Statutes are exempt from this Article.

**"§ 53-443. Sales-based financing disclosure requirements.**

(a) A provider shall provide all of the following disclosures to a recipient in a format prescribed by the Commissioner at the time of extending a specific offer of sales-based financing:

(1) The total amount of the commercial financing.

(2) The disbursement amount, if different from the total amount of the commercial financing. This amount does not include any fees deducted at the time of disbursement.

(3) The finance charge.

(4) The estimated annual percentage rate, using the words "annual percentage rate" or the abbreviation "APR," inclusive of the finance charge and any fees and calculated in accordance with 12 C.F.R. § 1026.22 based on the estimated term of repayment and the projected payment amounts. The estimated term of repayment and the projected payment amounts shall be calculated based on

- 1           the recipient's projected sales volume. The projected sales volume shall be  
2           calculated in accordance with subsection (b) of this section.
- 3           (5)   The total repayment amount, or the disbursement amount plus the finance  
4           charge.
- 5           (6)   The estimated term of repayment, based on the recipient's projected sales  
6           volume.
- 7           (7)   The payment amounts, based on the recipient's projected sales volume, as  
8           follows:
- 9           a.     For payment amounts that are fixed, all of the following:
- 10           1.     The payment amounts and frequency.
- 11           2.     If the payment frequency is other than monthly, the amount of  
12           the average projected payment per month.
- 13           b.     For payment amounts that are variable, all of the following:
- 14           1.     A payment schedule or a description of the method used to  
15           calculate the amounts and frequency of the payments.
- 16           2.     The amount of the average projected payment per month.
- 17           (8)   A description of all other potential fees not included in the finance charge,  
18           including draw fees, late payment fees, and returned payment fees.
- 19           (9)   The following information relating to a recipient's election to pay off or  
20           refinance the commercial refinancing prior to full repayment:
- 21           a.     Whether the recipient upon this election would be required to pay a  
22           percentage of the unpaid portion of the finance charge, other than  
23           interest accrued since the recipient's last payment. If so, the provider  
24           shall disclose this percentage, as well as the maximum dollar amount  
25           the recipient could be required to pay.
- 26           b.     Whether the recipient upon this election would be required to pay any  
27           fees not already included in the finance charge.
- 28           (10) A description of any collateral requirements or security interests.
- 29           (b)   For purposes of this section, the provider shall calculate the recipient's projected sales  
30           volume according to one of the two methods listed below. The provider shall use the same  
31           method in all its sales-based financing and shall notify the Commissioner on which method it has  
32           elected to use. The methods are as follows:
- 33           (1)   Historical method. – If the provider elects to use the historical method, the  
34           provider shall calculate the recipient's projected sales volume according to the  
35           recipient's average volume of sales over a historical time period. The provider  
36           shall use the same historical time period in all its sales-based financing, and  
37           the historical time period shall be at least one month and shall not exceed 12  
38           months.
- 39           (2)   Opt-in method. – If the provider elects to use the opt-in method, the provider  
40           shall determine the recipient's projected sales volume using any reasonable  
41           method. The provider shall annually report to the Commissioner in a format  
42           acceptable to the Commissioner a summary of its disclosed estimated annual  
43           percentage rates in comparison to its actual annual percentage rates. The  
44           Commissioner shall determine whether the deviations between the disclosed  
45           estimated annual percentage rates and the actual annual percentage rates are  
46           too great. In making this determination, the Commissioner may require  
47           additional information from the provider. If the Commissioner determines that  
48           the deviations are too great, the Commissioner shall order the provider to use  
49           the historical method in all its sales-based financing.

1       (c) In determining under subdivision (b)(2) of this section whether the deviations  
2 between disclosed estimated annual percentage rates and the actual annual percentage rates are  
3 too great, the Commissioner may consider all of the following factors:

- 4           (1) Whether, based on the provider's knowledge at the time of the specific offer,  
5 the provider's estimation of the annual percentage rate was reasonable and  
6 made in good faith.  
7           (2) Whether any unusual or extraordinary circumstances impacted the deviation.  
8           (3) Whether the provider has explored other reasonable methods of calculating  
9 the recipient's projected sales volume in an effort to achieve a closer  
10 estimation of the annual percentage rate.

11 **"§ 53-444. Closed-end financing disclosure requirements.**

12 A provider shall provide all of the following disclosures to a recipient in a format prescribed  
13 by the Commissioner at the time of extending a specific offer of closed-end financing:

- 14           (1) The total amount of the commercial financing.  
15           (2) The disbursement amount, if different from the total amount of the  
16 commercial financing. This amount does not include any fees deducted at the  
17 time of disbursement.  
18           (3) The finance charge.  
19           (4) The annual percentage rate, using the words "annual percentage rate" or the  
20 abbreviation "APR," inclusive of the finance charge and any fees and  
21 calculated in accordance with 12 C.F.R. § 1026.22.  
22           (5) The total repayment amount, or the disbursement amount plus the finance  
23 charge.  
24           (6) The term of repayment.  
25           (7) The payment amounts as follows:  
26           a. For payment amounts that are fixed, all of the following:  
27               1. The payment amounts and frequency.  
28               2. If the payment frequency is other than monthly, the amount of  
29 the average projected payment per month.  
30           b. For payment amounts that are variable, all of the following:  
31               1. A payment schedule or a description of the method used to  
32 calculate the amounts and frequency of the payments.  
33               2. The amount of the average projected payment per month.  
34           (8) A description of all other potential fees not included in the finance charge,  
35 including draw fees, late payment fees, and returned payment fees.  
36           (9) The following information relating to a recipient's election to pay off or  
37 refinance the commercial refinancing prior to full repayment:  
38           a. Whether the recipient upon this election would be required to pay a  
39 percentage of the unpaid portion of the finance charge, other than  
40 interest accrued since the recipient's last payment. If so, the provider  
41 shall disclose this percentage, as well as the maximum dollar amount  
42 the recipient could be required to pay.  
43           b. Whether the recipient upon this election would be required to pay any  
44 fees not already included in the finance charge.  
45           (10) A description of any collateral requirements or security interests.

46 **"§ 53-445. Open-end financing disclosure requirements.**

47       (a) A provider shall provide all of the following disclosures to a recipient in a format  
48 prescribed by the Commissioner at the time of extending a specific offer of open-end financing:

- 49           (1) The maximum amount of credit available to the recipient.  
50           (2) The amount scheduled to be drawn by the recipient, if any. This amount does  
51 not include any fees deducted at the time of disbursement.

- 1           (3)    The finance charge.
- 2           (4)    The annual percentage rate, using the words "annual percentage rate" or the  
3           abbreviation "APR," inclusive of the finance charge and any fees and  
4           calculated in accordance with 12 C.F.R. § 1026.22.
- 5           (5)    The total repayment amount, or the draw amount plus the finance charge.
- 6           (6)    The term of the plan.
- 7           (7)    The payment amounts as follows:
- 8           a.     For payment amounts that are fixed, all of the following:
- 9           1.     The payment amounts and frequency.
- 10          2.     If the payment frequency is other than monthly, the amount of  
11          the average projected payment per month.
- 12          b.     For payment amounts that are variable, all of the following:
- 13          1.     A payment schedule or a description of the method used to  
14          calculate the amounts and frequency of the payments.
- 15          2.     The amount of the average projected payment per month.
- 16          (8)    A description of all other potential fees not included in the finance charge,  
17          including draw fees, late payment fees, and returned payment fees.
- 18          (9)    The following information relating to a recipient's election to pay off or  
19          refinance the commercial refinancing prior to full repayment:
- 20          a.     Whether the recipient upon this election would be required to pay a  
21          percentage of the unpaid portion of the finance charge, other than  
22          interest accrued since the recipient's last payment. If so, the provider  
23          shall disclose this percentage, as well as the maximum dollar amount  
24          the recipient could be required to pay.
- 25          b.     Whether the recipient upon this election would be required to pay any  
26          fees not already included in the finance charge.
- 27          (10) A description of any collateral requirements or security interests.
- 28          (b)    In calculating the finance charge in subdivision (a)(3) of this section, the annual  
29          percentage rate in subdivision (a)(4) of this section, the total repayment amount in subdivision  
30          (a)(5) of this section, and the payment amounts in subdivision (a)(7) of this section, the provider  
31          shall deem the draw amount according to one of the two methods listed below. The provider shall  
32          use the same method in all its open-end financing and shall notify the Commissioner on which  
33          method it has elected to use. The methods are as follows:
- 34                  (1)    Total credit method. – If the provider elects to use the total credit method for  
35                  open-end commercial credit plans, the provider shall make its calculations by  
36                  assuming the maximum amount of credit available to the recipient, in each  
37                  case, is drawn and repaid at the minimum rate.
- 38                  (2)    Comparable method. – If the provider elects to use the comparable method for  
39                  open-end commercial credit plans, the provider shall determine its own  
40                  reasonable method for its calculations based on the draw and repayment  
41                  behavior of comparable transactions. The provider shall annually report to the  
42                  Commissioner in a format acceptable to the Commissioner a summary of its  
43                  disclosures and in comparison to its actual results as determined upon the  
44                  repayment of the transaction. The Commissioner shall determine whether the  
45                  deviations between the estimated results and the actual results are too great.  
46                  In making this determination, the Commissioner may require additional  
47                  information from the provider. If the Commissioner determines that the  
48                  deviations are too great, the Commissioner shall order the provider to use the  
49                  total credit method in all its open-end commercial credit plans.

1       (c) In determining under subdivision (b)(2) of this section whether the deviations  
2 between disclosed estimates for subdivisions (a)(3), (a)(4), (a)(5), and (a)(7) of this section are  
3 too great, the Commissioner may consider all of the following factors:

- 4           (1) Whether, based on the provider's knowledge at the time of the specific offer,  
5 the provider's estimation was reasonable and made in good faith.
- 6           (2) Whether any unusual or extraordinary circumstances impacted the deviation.
- 7           (3) Whether the provider has explored other reasonable methods of calculation in  
8 an effort to achieve a closer estimation of the actual results.

9 **"§ 53-446. Factoring transaction disclosure requirements.**

10 A provider shall provide all of the following disclosures to a recipient in a format prescribed  
11 by the Commissioner at the time of extending a specific offer for a factoring transaction:

- 12           (1) The purchase amount, or the amount of accounts receivable purchased from  
13 the recipient.
- 14           (2) The disbursement amount, if different from the purchase amount. This amount  
15 does not include any fees deducted at the time of disbursement.
- 16           (3) The finance charge. This amount includes any discount deducted from the face  
17 value of the accounts receivable.
- 18           (4) The estimated annual percentage rate, using that term, calculated according to  
19 12 C.F.R. Part 1026 Appendix J, as a single advance, single payment  
20 transaction. In making this calculation, the purchase amount is deemed to be  
21 the financing amount, the purchase amount minus the finance charge  
22 expressed as a negative number is deemed to be the total repayment amount,  
23 and the term is determined by one of the following methods:
  - 24           a. By the payment due date of the accounts receivable.
  - 25           b. By the provider estimating the term as the average payment period by  
26 the party owing the accounts receivable over a historical time period.  
27 The historical time period shall not exceed the preceding 12 months.
- 28           (5) The total repayment amount, or the purchase amount plus the finance charge.
- 29           (6) A description of all other potential fees not included in the finance charge.
- 30           (7) A description of the receivables purchased and any additional collateral  
31 requirements or security interests.

32 **"§ 53-447. Disclosure requirements for other forms of commercial financing.**

33 A provider shall provide all of the following disclosures to a recipient in a format prescribed  
34 by the Commissioner at the time of extending a specific offer of commercial financing that is not  
35 sales-based financing, open-end financing, closed-end financing, or a factoring transaction:

- 36           (1) The total amount of the commercial financing.
- 37           (2) The disbursement amount, if different from the total amount of the  
38 commercial financing. This amount does not include any fees deducted at the  
39 time of disbursement.
- 40           (3) The finance charge.
- 41           (4) The annual percentage rate, using the words "annual percentage rate" or the  
42 abbreviation "APR," inclusive of the finance charge and any fees and  
43 calculated in accordance with 12 C.F.R. Part 1026.
- 44           (5) The total repayment amount, or the disbursement amount plus the finance  
45 charge.
- 46           (6) The term of the financing.
- 47           (7) The payment amounts as follows:
  - 48           a. For payment amounts that are fixed, all of the following:
    - 49               1. The payment amounts and frequency.
    - 50               2. If the payment frequency is other than monthly, the amount of  
51 the average projected payment per month.

- 1                   b.     For payment amounts that are variable, all of the following:  
2                    1.     A payment schedule or a description of the method used to  
3                    calculate the amounts and frequency of the payments.  
4                    2.     The amount of the average projected payment per month.  
5               (8)    A description of all other potential fees not included in the finance charge,  
6                including draw fees, late payment fees, and returned payment fees.  
7               (9)    The following information relating to a recipient's election to pay off or  
8                refinance the commercial refinancing prior to full repayment:  
9                   a.     Whether the recipient upon this election would be required to pay a  
10                  percentage of the unpaid portion of the finance charge, other than  
11                  interest accrued since the recipient's last payment. If so, the provider  
12                  shall disclose this percentage, as well as the maximum dollar amount  
13                  the recipient could be required to pay.  
14                  b.     Whether the recipient upon this election would be required to pay any  
15                  fees not already included in the finance charge.  
16               (10)  A description of any collateral requirements or security interests.

17 **"§ 53-448. Disclosure requirements for renewal financing.**

18     If, as a condition of obtaining new commercial financing, a provider requires the recipient to  
19     pay off some or all of the balance of an existing commercial financing from the same provider,  
20     the provider shall disclose all of the following in a format prescribed by the Commissioner at the  
21     time of extending a specific offer of the new commercial financing:

- 22               (1)    The amount of the new commercial financing that will be used to pay off any  
23                  prepayment charge or unpaid interest. If the total repayment amount for the  
24                  existing financing is fixed, the prepayment charge is equal to the product of  
25                  the finance charge for the existing financing multiplied by the percentage of  
26                  the total repayment amount that will be paid off, minus any portion of the total  
27                  repayment amount that will be forgiven.  
28               (2)    If the disbursement amount will be reduced to pay off a portion of the balance,  
29                  the amount by which the disbursement amount will be reduced.

30 **"§ 53-449. Additional requirements for disclosures.**

31     (a) If a provider is required to make disclosures under this Article, the provider shall  
32     present these disclosures to the recipient as a document separate from all other information to be  
33     signed by the recipient. The provider shall obtain the recipient's signature before proceeding with  
34     the transaction.

35     (b) If a provider presents any information in addition to the disclosures required under  
36     this Article, the provider shall not use the term "rate" in describing a metric other than the annual  
37     percentage rate or estimated annual percentage rate or annual interest rate. The term "interest,"  
38     when used to describe a percentage rate, shall only be used to describe annualized percentage  
39     rates, such as the annual interest rate. When a provider states a rate of finance charge or a  
40     financing amount to a recipient during an application process for commercial financing, the  
41     provider shall also state the rate as an "annual percentage rate," using that term or the abbreviation  
42     "APR."

43     (c) If the Commissioner determines that the laws of another state require commercial  
44     financing disclosures that meet or exceed the commercial financing disclosure requirements  
45     established in this Article, any commercial financing disclosure form that such other state  
46     approves for the purposes of complying with such other state's commercial financing disclosure  
47     laws may be used for the purposes of complying with the commercial financing disclosure  
48     requirements established under this Article.

49 **"§ 53-450. Registration requirement.**

50     (a) A provider operating in this State shall register with the Commissioner in a format  
51     prescribed by the Commissioner and shall submit a registration fee, as required by this section.



1 A provider shall comply with all provisions of this Article. The registration required by this  
2 section shall be renewed every five years.

3 (b) A provider shall pay a nonrefundable fee of one thousand dollars (\$1,000) at the time  
4 of registration and renewal.

5 **"§ 53-451. Registration application.**

6 Applications for registration under this Article shall be filed through the Commissioner. To  
7 be considered complete, the application shall be verified by attestation of the applicant or a  
8 designee of the applicant and shall include all of the following:

9 (1) The applicant's legal name, along with any assumed business name, principal  
10 address, including street address and mailing address, contact information,  
11 and social security number or taxpayer identification number.

12 (2) The applicant's form and place of organization, if applicable.

13 **"§ 53-452. Notice of material change.**

14 If the information contained in any document filed with the Commissioner under this Article  
15 is or becomes inaccurate or incomplete in any material respect, the provider shall, within 30 days,  
16 file a correcting amendment to the information contained in the document.

17 **"§ 53-453. Consumer complaints.**

18 The Commissioner may receive a complaint from a recipient regarding a provider in regards  
19 to the requirements set forth in this Chapter and, upon receipt of the complaint, may investigate  
20 the provider for failure to comply with this Article.

21 **"§ 53-454. Confidentiality.**

22 (a) All information obtained by the Commissioner under this Article is subject to  
23 confidential treatment as provided in G.S. 53C-2-7.

24 (b) The Commissioner may enter into written agreements with other governmental  
25 agencies, the Conference of State Bank Supervisors, or other associations representing  
26 governmental agencies and may share otherwise confidential information pursuant to these  
27 agreements.

28 (c) The requirements of G.S. 53C-2-7 regarding the privacy or confidentiality of any  
29 information provided under subsection (b) of this section, and any privilege arising under any  
30 other federal or State law with respect to the information, continue to apply to the information  
31 after it has been disclosed to an entity described in subsection (b) of this section. Information  
32 held by the entity is not subject to disclosure under any State law governing the disclosure to the  
33 public of information held by an officer or agency of the State. The entities described in  
34 subsection (b) of this section may share information with State and federal regulatory officials  
35 without the loss of privilege or the loss of confidentiality protections provided by State and  
36 federal law.

37 **"§ 53-455. Rules; appeal by aggrieved person.**

38 (a) The Commissioner may adopt rules to enforce this Article, including rules to calculate  
39 metrics required to be disclosed under this Article.

40 (b) Pursuant to G.S. 53C-2-6(b), any person aggrieved by any rule adopted or order  
41 issued by the Commissioner may appeal to the State Banking Commission for review upon  
42 providing a written notice of appeal within 20 days after the rule was adopted or order was issued.  
43 The notice of appeal shall specifically state the grounds for appeal and, in the case of an appeal  
44 from a contested case proceeding before the Commissioner, shall set forth in numbered order the  
45 assignments of error for review by the State Banking Commission. Failure to specify the  
46 assignments of error or failure to comply with the briefing schedule provided by the State  
47 Banking Commission constitutes grounds to dismiss the appeal. Any party aggrieved by a  
48 decision of the State Banking Commission may petition for judicial review pursuant to  
49 G.S. 53C-2-6(b).

50 **"§ 53-456. Penalties; enforcement.**

1       (a) After notice and opportunity for hearing in accordance with Article 3A of Chapter  
2 150B of the General Statutes, if the Commissioner finds that a provider has violated any provision  
3 of this Article or any rule adopted under it, the Commissioner may do any of the following:

4           (1) Order the provider to cease and desist from any violations of this Article.

5           (2) Assess a civil penalty of not more than two thousand dollars (\$2,000) for each  
6 violation or ten thousand dollars (\$10,000) for each violation that the  
7 Commissioner finds to be willful. The clear proceeds of civil penalties  
8 imposed pursuant to this section shall be remitted to the Civil Penalty and  
9 Forfeiture Fund in accordance with G.S. 115C-457.2.

10       (b) The powers vested in the Commissioner by this Article are in addition to any other  
11 enforcement powers of the Commissioner."

12       **SECTION 2.** This act is effective May 1, 2023, and applies to transactions occurring  
13 on or after that date.