

## New York Financing Arrangements Bill Would Have Major Implications for Commercial Financing

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A bill before the New York State Assembly would, if passed, have major implications for a variety of financing transactions in the Empire State. Titled the End Loan Sharking Act, [Assembly Bill 9585](#) would subject a variety of products to the state's usury limits and licensing requirements. Among other things, the bill would:

1. Apply the state's usury limits (both civil and criminal) to "financing arrangements." This term would be broadly defined to include not only the lending or advancing of money, but also a number of products that the bill deems to be equivalent to such transactions such as:

- a. merchant cash advances;
- b. invoice financing;
- c. revenue-based financing;
- d. retail installment contracts;
- e. earned wage access and similar wage advance transactions;
- f. lease-to-own and rent-to-own transactions;
- g. rental-purchase transactions;
- h. buy-now pay-later transactions;
- i. litigation financing; and
- j. education income-sharing agreements.

The bill would grant the attorney general with rule-writing authority and the ability to issue guidance to interpret the term "financing arrangements." The bill would also strike provisions from the New York statutes governing rental-purchase agreements that currently prohibit the attorney general from characterizing such transactions as a form of consumer credit or as requiring an annual percentage rate disclosure.

2. Expand the definition of "interest" for usury calculation purposes. As amended, interest would

include all amounts charged, taken, or paid, either directly or indirectly and either voluntarily or otherwise, by any person to or for the account of the lender (including any discount applied to amounts advanced in connection with a financing arrangement). It would include fees, charges, tips, renewal charges, credit insurance premiums, debt suspension or similar products, and any other amount paid or payable. For consumer transactions only, interest would also include any ancillary product sold in connection with an extension of consumer credit.

3. Require calculation of the rate of interest on financing arrangements to be done in conformity with the annual percentage rate calculation in the New York commercial financing regulations. The charges identified as components of interest as discussed above would need to be included in this calculation.

4. Amend the licensing requirement of the New York Licensed Lender Act to include any party entering into financing arrangements with individuals in the amount of \$25,000 or less (for consumer transactions) or \$50,000 or less (for business or commercial purposes). The bill would also establish the criminal usury limit (25% per annum) as the maximum rate for such transactions. Because retail installment contracts are included within the definition of "financing arrangement," this would appear to impose this licensing requirement on retail sellers of motor vehicles, goods, and services. Currently, such entities are largely exempt from licensure under New York's sales finance company licensing laws.

The bill as drafted would become effective immediately, which would represent a near insurmountable compliance challenge, particularly in regard to licensing obligations that did not previously exist. Consumer and commercial financial services providers should monitor this bill closely.

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