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VA AND UT IMPOSE REQUIREMENTS ON MERCHANT CASH ADVANCE TRANSACTIONS

Within a month, Virginia and Utah both enacted legislation aimed at controlling merchant cash advance transactions through registration and disclosure requirements. The Virginia statute becomes effective July 1, 2022, with a registration deadline of November 1, 2022. The Utah statute becomes effective January 1, 2023.

The Virginia Act adds a new chapter to the Financial Institutions title of the Virginia Code governing Sales-Based Financing Providers. See Va. Code Ann §§ 6.2-2228 *et seq.* "Sales-based financing" is defined as a transaction that is repaid by the recipient to the provider, over time, as a percentage of sales or revenue, in which the payment amount may increase or decrease according to the volume of sales made or revenue received by the recipient and includes a mechanism where the financing is repaid as a fixed payment but provides for a reconciliation process that adjusts the payment to an amount that is a percentage of sales or revenue.

The Act sweeps broadly, applying to providers or brokers offering, obtaining or making sales-based financing over the internet for or to any recipient whose principal place of business is in Virginia. Financial institutions, transactions over \$500,000 and providers or brokers engaging in no more than five transactions with a recipient in a 12-month period are exempt from the Act. The Act requires every sales-based financing provider or broker to register with the Virginia State Corporation Commission by November 1, 2022.

Upon extending an offer of financing, providers must disclose to recipients certain information, including the total amount of financing, the finance charge, the total repayment amount, the estimated number of payments and a description of all other potential fees and charges not included in the finance charge. Additionally, the Act renders governing law provisions unenforceable by requiring cause of actions under any sales-based financing agreement to be brought in a Virginia court. Likewise, agreements may not require in-person arbitration outside the jurisdiction where the recipient's principal place of business is located, and requires providers to cover the cost of arbitration.

The Utah Commercial Financing Registration and Disclosure

Act adds a new chapter to the Financial Institutions Act. See Utah Code §§ 7-27-101 *et seq.* The Act defines "commercial financing transaction" as a business purpose transaction under which a person extends a business a commercial loan or open-end credit plan or *that is an accounts receivable purchase transaction.* An "accounts receivable purchase transaction" means a transaction in which a business forwards or otherwise sells a person all or purchase of the business's accounts or payment intangibles at a discount to the accounts' or payment intangible's expected value.

The Act applies to anyone engaging in a commercial financing transaction as a provider in Utah or with a Utah resident. It requires providers to register with the Utah Department of Financial Institutions by January 1, 2023. Depository institutions, providers consummating five or fewer commercial financing products during any 12 month period, and transactions of more than \$1,000,000 are exempt from the registration requirements. Prior to consummating a commercial financing transaction, providers must disclose, among other things, the total amount of funds provided to the business, the total dollar cost of the transaction, a statement indicating costs or discounts associated with prepayment (if any) and the amount of funds paid to a broker (if any).

The Virginia and Utah requirements follow disclosure requirements in New York and California, which have not yet taken effect because of regulatory delays. We continue to monitor the status of statutory implementation in California, New York, Utah and Virginia and provide updates. Please let us know if you have any questions regarding compliance with these new merchant cash advance requirements. We can advise on how the statutes impact your merchant cash advance programs. □

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