



February 28, 2023

ILLINOIS COMMERCIAL FINANCING DISCLOSURE BILL INTRODUCED

On February 10, the Illinois Senate introduced Senate Bill 2234, the Small Business Truth in Lending Act. S.B. 2234 would join similar laws in California and New York in broadly requiring commercial financing to provide consumer Truth-in-Lending-like disclosures for commercial financing under \$2.5 million. See our prior ALERTS dated [February 10, 2023](#) (New York) and [June 15, 2022](#) (California).

S.B. 2234 would apply to any commercial financing transaction in amounts of \$2.5 million or less that is not secured by real property. S.B. 2234 would also exempt banks, credit unions, industrial loan companies, but does not mention affiliates or subsidiaries. S.B. 2234 would exempt a technology services provider to an exempt entity with a commercial financing program, provided that the technology services provider has no interest or agreement to purchase any interest in the commercial financing extended under the program.

Like the California and New York bills, S.B. 2234 would require a "provider," defined as a person who extends a specific offer of commercial financing to a recipient, to give certain disclosures. Separate disclosures are required based on whether a specific offer of commercial financing fits in the bill's categories for sales-based, closed-end, open-end, factoring or renewal financing or the catch-all category for all other financing. Each category requires an APR disclosure. Disclosures would have to follow formatting requirements set by the Illinois Department of Financial and Professional Regulation. Any financing that violates the disclosure requirements would be declared null and void and the provider would be subject to a \$10,000 civil penalty as well as restitution and liability under Illinois' unfair and deceptive trade practices statute. S.B. 2234 also contains a private right of action with attorneys' fees.

S.B. 2234 is in the beginning stages of Illinois' legislative process. Bill sponsors and the Illinois Department of Financial and Professional Regulation expect to involve the financial services industry in amending the bill and drafting formatting regulations.

With multiple states developing their own commercial financing disclosure laws, commercial financing providers could face a patchwork of differing disclosure requirements. Providers must already comply with final regulations in California and New York.

Utah's requirement is still awaiting the formatting requirements, while Virginia's requirement applies only to sales-based financing. See our prior ALERT dated [May 6, 2022](#). Similar laws are under consideration in Connecticut, Missouri, Maryland, New Jersey and North Carolina. The long-standing New Hampshire disclosure requirement is much simpler.

We continue to monitor state and federal regulation of commercial financing as the area develops. We have advised multiple commercial financing programs on compliance with these laws and specialize in multistate compliance. If you have any questions or would like assistance with the disclosure requirements, please let us know. ☐

✧ *Mike Tomkies and Benjamin Hurford*

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