



ADDITIONAL COMMERCIAL FINANCING DISCLOSURES STATUTES ENACTED

Since California and New York passed disclosure requirements for commercial financing in 2021, similar laws have been introduced and enacted in several state legislatures. Recently, Georgia passed a law requiring disclosures for commercial financing effective January 1, 2024. Florida's new commercial financing law applies to commercial financing transactions consummated on or after January 1, 2024. Connecticut's new commercial financing disclosure law is effective July 1, 2024. These three state commercial financing disclosure laws join those already in existence in California, New York, Utah and Virginia.

The Georgia commercial financing disclosure law applies to "commercial financing transactions," defined to mean commercial loans, commercial open-end credit plans and accounts receivable purchase transactions. "Accounts receivable purchase transaction" is defined broadly to include a transaction in which a business sells all or a portion of the business's accounts or payment intangibles at a discount. The law does not apply to a commercial financing transaction of more than \$500,000.

The Florida commercial financing disclosure law applies to "commercial financing transactions," defined to mean a commercial loan, an accounts receivable purchase transaction or a commercial open-end credit plan. "Accounts receivable purchase transaction" is defined broadly to include a transaction in which a business sells all or a portion of the business's accounts or payments intangibles at a discount. The law does not apply to a commercial financing transaction of more than \$500,000.

The Connecticut commercial financing disclosure law applies only to sales based financing and only to transactions not exceeding \$250,000. Thus, the Connecticut law is narrower in scope than the Georgia or Florida laws. The law defines sales based financing as a transaction that is repaid over time (i) as a percentage of sales or revenue or (ii) as a fixed payment mechanism that adjusts payments as a percentage of sales or revenues. The law authorizes the Banking Commissioner to adopt regulations and prescribe a disclosure format. The law requires registration by providers and brokers no later than October 1, 2024.

With states developing their own commercial financing

disclosure laws, commercial financing providers are facing a patchwork of different disclosure requirements and different applicability triggers. Thus, it is important for those entering into commercial transactions that could be deemed commercial financing to compare the features of their transactions to the state law triggers. Once a company determines that it is subject to a law, the state specific disclosures need to be examined to see how the transaction must be disclosed.

As more states enact commercial financing disclosures laws that are not uniform, the federal government may yet step in to provide some uniformity.

We continue to monitor state and federal regulation of commercial financing as the area develops and to advise on compliance obligation of the different state laws. □

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