

Utah Enacts Commercial Financing Disclosure Requirement

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On March 24, Utah Governor Spencer Cox signed [SB 183](#) into law making Utah the third state in the country to enact a Truth in Lending-like commercial financing disclosure law. Utah joins California and New York to adopt such statutory commercial financing disclosure requirements. As opposed to similar laws in California and New York, however, the Utah Commercial Financing Registration and Disclosure Act (the Act) does not include an “APR” disclosure requirement and requires commercial lenders to register as commercial loan providers with the Nationwide Multistate Licensing System and Registry and Utah Department of Financial Institutions (DFI). The law has an effective date of January 1, 2023.

Scope

The Act applies to commercial-purpose transactions in amounts of \$1 million or less that qualify as commercial loans, commercial open-end credit plans or accounts receivable purchase transactions, the latter being defined to reach typical merchant cash advance or factoring transactions. The Act does not apply to a transaction of at least \$50,000 where the recipient of the funding is a motor vehicle dealer. Depository institutions, licensed money transmitters, commercial equipment lessors, and purchase money lenders, among others, are also exempt.

Disclosures

Commercial lenders will be required to disclose the following:

- The total amount of funding provided to the business
- The total amount of funding disbursed to the business, if less than the total amount of the funding
- The total amount that the business must pay to the commercial lender
- The total dollar cost of the commercial financing transaction, to be calculated by subtracting the total funding provided from the total amount to be paid to the lender

- The manner, frequency, and amount of each payment, or if payment amounts may vary, the manner and frequency of payments and an estimate of the amount of the first payment
- A statement of whether there are any costs or discounts associated with prepayment of the commercial loan, including a reference to the section of the agreement that creates such cost or discount.
- Any part of the funding that the provider pays to a broker.
- A description of the methodology that will be used to calculate any variable payment amount and the circumstances that may cause variations in the payment amount.

Penalties

While the Act does not create a private right of action, each violation of the Act's disclosure requirements is subject to a civil penalty of \$500, up to \$20,000 for all violations resulting from the use of the same transaction disclosures. Higher monetary penalties apply to a person that continues to violate after receiving notice of a prior violation.

Putting it Into Practice: Commercial lenders will likely need to prepare for additional disclosure laws being considered in several other states, including in Connecticut, Maryland, Mississippi, Missouri, New Jersey, North Carolina, and Virginia. However, for now, commercial lenders impacted by the laws in New York, California, and Utah should be prepared to potentially implement three separate disclosure processes.

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