

Florida Enacts Commercial Financing Disclosure Law

Article By:

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On June 23, 2023, Florida Governor Ron DeSantis signed into law Florida House Bill 1353, the latest in the growing trend of commercial financing disclosure laws (CFDLs). Florida follows the lead of California, Georgia, New York, Virginia, and Utah, each having enacted laws requiring consumer-like disclosures in various types of commercial loans. By comparison, Florida's CFDL appears most similar to those of Georgia and Utah because, among other similarities, it applies to a wide variety of commercial loans but does not include an APR disclosure requirement and does not incorporate other Truth in Lending Act (TILA) and related regulatory provisions that are specific to consumer loans.

Florida's CFDL applies to a commercial financing transaction with a business located in the State of Florida. A commercial financing transaction is defined broadly to include a loan to a business, whether secured or unsecured, an accounts receivable purchase transaction, and an open-end credit plan. Certain loan providers are exempt from the law, including depository institutions and affiliates, licensed money transmitters, and those providers making no more than five loans annually. Certain transactions are also exempt, including those in excess of \$500,000, financings secured by real estate, leases, purchase money obligations, and certain

motor vehicle-related transactions.

The law applies to commercial financing transactions consummated on or after January 1, 2024. It mandates disclosure in writing of: (i) the total amount of funds provided to the business; (ii) the total amount of funds disbursed to the business, if different from the amount provided; (iii) the total amount that the business must pay to the provider; (iv) the total dollar cost of the terms of the commercial financing transaction, calculated as the difference between the amount that the business must pay to the provider and the total amount of funds provided to the business; (v) 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; and (vi) a statement of whether there are costs or discounts associated with prepayment with reference to provisions in the agreement. If payment amounts vary, the provider must describe the methodology for calculating the variable payment amount and the circumstances that cause the payment amount to change. These disclosures must be provided prior to consummation of the financing.

Violations of the law are subject to civil penalty. Each violation is subject to a civil penalty of \$500, up to \$20,000 for all violations resulting from the use of the same transaction documents or materials. Penalties increase for repeat violations after notice.

As of the date of this post, the following states have proposed various forms of commercial financing laws this legislative session: Connecticut (Senate Bill 1032); Illinois (Senate Bill 2234 and House Bill 3064), Kansas (Senate Bill 245), Maryland (House Bill 496, which has since failed); Mississippi (Senate Bill 2619 and House Bill 1271, both of which have since failed), Missouri (Senate Bill 187 and House Bill 584, both of which have since failed), and North

Carolina (Senate Bill 539 and House Bill 662). New Jersey's proposed CFDL remains pending during the carry-over session (Senate Bill 819 and House Bill 2150). Congress too is moving forward with its own legislation, proposing to expand TILA's reach to extensions of credit to small businesses (Senate Bill 2021 and House Bill 4192).

Womble Bond Dickinson (US) LLP is closely monitoring developments in this area and remains ready to assist clients navigate these laws, legislation and regulations.

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