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Georgia, Florida, Connecticut Enact Commercial Financial Disclosure Laws

by Stephen Ornstein and Josh Dhyani

Georgia, Florida, and Connecticut are among a growing list of states, including California, New York, Utah, and Virginia, that have enacted laws requiring consumer-style disclosures for commercial financing transactions. These laws are part of a burgeoning trend by state legislatures to impose burdensome disclosures, like those required by the federal Truth in Lending Act (TILA), on providers of small-balance commercial loans and financings. These laws apply to business-purpose transactions but not to transactions having a consumer, family, or household purpose.

The Georgia Law

On May 1, 2023, Georgia amended its Fair Business Practices Act to require certain providers of commercial financings of $500,000 or less to furnish various disclosures to small-business borrowers before the consummation of the transactions. The statute, known as Senate Bill 90, applies to covered commercial financings consummated on or after January 1, 2024.

The Georgia law requires providers of commercial credit in amounts of $500,000 or less to provide TILA-like disclosures to small-business borrowers before the consummation of the transaction but does not specify the time period. The Georgia law defines "provider" as "a person who consummates more than five commercial financing transactions" in Georgia during any calendar year, including participants in commercial purpose marketplace lending arrangements. "Commercial financing transactions" include both closed-end and open-end commercial loans as well as accounts receivable purchase transactions *but do not include real-estate-secured transactions*.

Exemptions

The Georgia law exempts federally insured depository institutions and their subsidiaries, affiliates, and holding companies; Georgia-licensed money transmitters; captive finance companies; and institutions regulated by the federal Farm Credit Act. The law also exempts purchase money obligations.

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Required Disclosures

The Georgia law requires providers of commercial financing transactions to furnish the following information prior to consummation:

- Total funds provided to the business.
- Total funds disbursed.
- Total amount paid to the provider.
- Total dollar cost of the transaction.
- Payment schedule.
- Costs associated with prepayment.

Penalties

Providers who violate these disclosure requirements face civil penalties ranging from $500 per violation to $20,000 with possible additional penalties for continued violations. Notably, violations do not affect the enforceability of the transactions, and there is no private right of action under the law.

The Florida Law

On June 26, 2023, Florida enacted the Florida Commercial Financing Disclosure Law, which requires covered providers to furnish consumer-oriented disclosures to businesses for certain commercial non-real-estate-secured financing transactions exceeding $500,000. The Florida law takes effect July 1, 2023 and becomes mandatory for transactions consummated on or after January 1, 2024.

The Florida law applies to providers of commercial financing transactions and defines "provider" as a "person who consummates more than five commercial financings" in Florida during any calendar year. "Commercial financing transactions" include commercial loans, open-end lines of credit, and accounts receivable purchase transactions. The Florida law exempts the following entities and transactions: federally insured depository institutions, their subsidiaries, affiliates, and holding companies; licensed money transmitters; real-estate-secured loans; loans exceeding $500,000; leases; and certain purchase money transactions.

Required Disclosures

The provider is required to disclose in writing the following at or before the consummation of a commercial financing transaction:

- The total amount of funds provided to the business.
- The total amount of funds *disbursed* to the business if less than the total amount of funds provided because of any fees deducted or withheld at disbursement and any amount paid to a third party on behalf of the business.
- The total amount to be paid to the provider.

- The total dollar cost of the commercial financing transaction, calculated by subtracting the total amount of funds provided from the total amount of the payments.
- The manner, frequency, and amount of each payment or, if there are variable payments, an estimated initial payment and the methodology used for calculating it.
- Certain information about prepayments.

Prohibited Acts

The Florida law prohibits a broker arranging a consumer financing transaction from engaging in any of the following acts:

- Assessing, collecting, or soliciting an advance fee from a business to provide services to a broker. However, this prohibition would not preclude a broker from soliciting a business to pay for, or preclude a business from paying for, actual services necessary to apply for commercial financial products, such as a credit check or an appraisal of security, if certain conditions are met.
- Making or using any false or misleading representations or omitting any material facts in the offer or sale of the services of a broker or engaging in any act that would "operate as fraud or deception upon any person in connection with the offer or sale of the services of the broker, notwithstanding the absence of reliance by the business."
- Making or using any false or deceptive representations in its business dealings.
- Offering the services of a broker by any advertisement without disclosing the actual address and telephone number of the business of the broker.

Penalties

Like the Georgia law, the Florida law punishes violations with civil fines ranging from $500 per incident to $20,000 with possible additional penalties for "aggregated violations." Notably, violations do not impair the enforceability of the transactions or create a private right of action.

The Connecticut Law

On June 28, 2023, Connecticut enacted "An Act Requiring Certain Financing Disclosures," which requires (1) lenders offering certain types of commercial purpose "sales-based financing" in amounts of $250,000 or less to provide specified consumer-like disclosures to applicants; and (2) mandates that lenders offering such credit register annually with the Connecticut Department of Banking starting by October 1, 2024. The Connecticut law authorizes the state banking commissioner to adopt promulgating regulations, and the law takes effect on July 1, 2024.

The Connecticut law applies to providers of commercial financings and defines "provider" as "a person who extends a specific offer of commercial financing to a recipient and includes, unless otherwise exempt … a commercial financing broker."

"Commercial financing" means any extension of sales-based financing by a provider not exceeding $250,000. Under the statute, "sales-based financing" is a "transaction that is repaid by the recipient to the provider over time" (1) as a percentage of sales or revenue, in which the payment amount may increase or decrease according to the recipient's sales or revenue, or (2) according to a fixed payment mechanism that provides for a reconciliation process that adjusts the payment to an amount that is a percentage of sales or revenue.

Notably, the Connecticut law exempts the following entities and transactions:

- Banks, bank holding companies, credit unions, and their subsidiaries and affiliates.
- Entities providing no more than five commercial financing transactions in a 12-month period.
- Real-estate-secured loans.
- Leases.
- Purchase money obligations.
- Technology service providers acting for an exempt entity as long as they do not have an interest in the entity's program.
- Transactions of $50,000 or more to motor vehicle dealers or rental companies.
- Transactions offered in connection with the sale of a product that the person manufactures, licenses, or distributes.

Required Disclosures

The Connecticut law requires that before making a "specific offer" (i.e., a binding offer of credit) providers must furnish certain disclosures to borrowers, in a form prescribed by the state banking commissioner, including:

- The total amount of the commercial financing.
- The disbursement amount, which is the amount paid to the recipient or on the recipient's behalf, excluding any finance charges that are deducted or withheld at disbursement.
- The finance charge.
- The total repayment amount, which is the disbursement amount plus the finance charge.
- The estimated repayment period.
- A payment schedule.
- A description of fees not included in the finance charge such as draw fees, and late charges.
- A description of any collateral requirements.
- Information about brokerage compensation.

The Connecticut banking commissioner is expected to promulgate implementing regulations and model disclosures before the effective date of July 1, 2024.

Registration Requirement

The Connecticut law requires providers and brokers to register with the state banking commissioner by October 1, 2024 and to qualify to "do business" in the state. The registration must be renewed annually.

Penalties

The statute authorizes the banking commissioner to impose civil penalties of up to $100,000 for violations of the law as well as enjoin those violating the statute.

Takeaway

The three state laws recently enacted in Georgia, Florida, and Connecticut are part of a growing trend among states to regulate small-balance commercial non-real-estate-secured loans. The burdens imposed by the laws will be the lenders' cross to bear unless they can avoid triggering the coverage of the statutes.

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