

Utah Becomes Third State to Enact Smaller Commercial Transaction Disclosure Law

April 6, 2022

On March 24, Utah Governor Spencer Cox signed into law SB 183, a bill that contains certain commercial transaction disclosure requirements applicable to prescribed providers of many forms of “smaller” business credit. Utah joins California and New York with respect to the adoption of such statutory commercial financing disclosure requirements. However, there are certain important nuances in Utah’s law, which may make it slightly less onerous than provisions enacted in California and New York, neither of which are effective as of the date of publication of this client alert.

SB 183, the Commercial Financing Registration and Disclosure Act (CFRDA), creates a new statutory scheme set forth at UT Code § 7-27-101 et seq. The specific disclosure requirements apply to “commercial financing transactions” defined as a business purpose transaction (e.g., a non-consumer transaction) under “which a person extends a business or commercial loan or a commercial open-end credit plan; or that is an accounts receivable purchase transaction.” Similar to the California and New York statutes, the concept of a “broker” is also included in the adopted statutory scheme: importantly, with respect to Utah’s law, the definition of “provider” includes an “online platform” that a person administers pursuant to a written agreement with a depository institution that offers such depository institution’s commercial financing products.

Specific Requirements

The statute exempts from its scope certain entities including: a depository institution (as well as a subsidiary or a service corporation of a depository institution); a provider that consummates five or fewer commercial financing products in Utah during any 12-month period; a commercial financing transaction secured by real property; and a commercial financing transaction of more than \$1 million. This is in contrast to California, where commercial transactions above \$500,000 are not subject to that state’s law and in contrast to New York, where commercial transactions above \$2.5 million are excluded from coverage.

Unlike statutory requirements in California and New York, Utah does have a registration requirement. Importantly, beginning on January 1, 2023, a commercial credit provider subject to the statutory requirements must register with the Utah Department of Financial Institutions (UT DFI) and maintain such registration annually.

In addition to a registration requirement, the law requires that, before “consummating” a commercial financing transaction, a provider must disclose the terms of the proposed commercial financing transaction in accordance with yet-to-be written rules adopted by the UT DFI. The disclosures must include information regarding:

- Total amount of funds provided to the business
 - Total amount of funds disbursed to the business
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- Total amount to be paid to the provider under the terms of the commercial financing transaction
- The manner and frequency of each payment (and in the case where the amount of each payment may vary, the manner, frequency, and estimated amount of the initial payment)

The statutory text of the law states that the required disclosures must be provided after January 1, 2023, although this assumes that the regulations required by the statute will be in place and operative at that time. Note that there was a similar requirement in New York's comparable law that was not achieved by the State of New York Department of Financial Services.

The law also provides that the UT DFI may accept public complaints about violations of the law.

Finally, the law provides a statutory civil penalty of \$500 per violation not to exceed \$20,000 for all violations arising from the use of the same transaction documents or materials.

CONTACTS

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