

## Utah Enacts Commercial Financing Disclosure Law

March 31, 2022 | [Katherine C. Fisher](#) and [Eric D. Mulligan](#)

On March 24, Utah Governor Spencer Cox signed S.B. 183, the Commercial Financing Registration and Disclosure Act ("CFRDA"). This makes Utah the third state to adopt a commercial financing disclosure law, following California and New York. However, the Utah disclosure law does not include an "APR" disclosure requirement. APR disclosure requirements have proven difficult to implement and have delayed the effective dates of the disclosure laws in California and New York.

Beginning on January 1, 2023, the CFRDA requires a provider of commercial financing in Utah to register with the Nationwide Multistate Licensing System and Registry ("NMLS") and with the Utah Department of Financial Institutions ("DFI"). Additionally, in a commercial financing transaction consummated on or after January 1, 2023, the provider must disclose certain information to a business that will receive funding before consummation of a commercial financing transaction. This information includes:

- The total amount of funding provided to the business.
- The total amount of funding disbursed to the business, if different from the amount provided.
- The total amount that the business must pay to the provider.
- The total dollar cost of the commercial financing transaction, which is the difference between the amount that the business must pay to the provider and the total amount of funding provided to the business.
- 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 prepayment may increase or decrease the cost of the commercial financing transaction, including references to any relevant provisions in the commercial financing transaction agreement.
- Any part of the funding that the provider pays to a broker.

Additionally, if payment amounts may vary, then the financing agreement must describe

the methodology for calculating a variable payment amount and the circumstances that may cause a payment to vary. The DFI may prescribe the form of the required disclosures.

The CFRDA applies to open- and closed-end loans and accounts receivable purchase transactions (i.e., merchant cash advance transactions) for business purposes. It does not apply to a transaction of more than \$1,000,000 or a transaction of at least \$50,000 where the recipient of the funding is a motor vehicle dealer. Depository institutions, licensed money transmitters, and occasional providers are exempt. Each violation of the CFRDA's disclosure requirements is subject to a civil penalty of \$500 (\$1,000 for a violation after notice of a previous violation), up to \$20,000 for all violations resulting from the use of the same transaction documents or materials (up to \$50,000 after notice of a previous violation). Each violation of the CFRDA's registration requirement is subject to an administrative fine of \$500 per Utah office of the violator, or \$500 if the violator does not offer commercial financing from an office in Utah.

California passed its commercial finance disclosure law in 2018. However, that law is still not effective and awaits final regulations. New York passed its commercial finance disclosure law in 2020. However, the New York Department of Financial Services has not yet adopted regulations, citing the complexity of the disclosure requirements. Because Utah's CFRDA does not include an APR disclosure, it is unlikely that the Utah law will face similar delays in implementation.

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