

LEGAL UPDATES

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Commercial Financing Disclosure and Broker Registration Bill Introduced in Missouri

On January 5, 2023, a bill was introduced in the Missouri legislature that would require non-depository financial institutions to provide disclosures at or before consummation of certain commercial financing products. Missouri House Bill No. 584 would also require commercial financing brokers to register with the Missouri Division of Finance. If passed, the law would be known as the Commercial Financing Disclosure Law.

Overview of the bill

As written, the bill requires a provider to disclose certain information to a business in connection with a commercial financing product. The term “commercial financing product” includes any commercial loan, accounts receivable purchase transaction, or commercial open-end credit plan. Both credit products and non-credit funding products like merchant cash advances could be “commercial financing products” subject to the disclosure requirements. The bill has a broad definition of “business” that includes sole proprietorships.

The term “provider” means persons that consummate more than five commercial financing products to a business located in Missouri in a calendar year. The term “provider” also includes certain non-lenders that arrange for the extension of commercial financing products by a depository institution through an online lending platform administered by the non-lender.

The disclosure requirements proposed in the Missouri bill are less onerous relative to commercial financing disclosure statutes in other states. At a high level, the bill requires a provider to disclose (i) the total amount of funds provided to a business, (ii) the total amount of funds disbursed to a business,

(iii) the total amount to be repaid to a provider pursuant to the commercial financing contract, and (iv) the total dollar cost of the commercial financing product. Certain repayment information must also be disclosed. At this juncture, the bill does not require an APR to be disclosed. The bill requires the same set of disclosures for all financing products that qualify as “commercial financing products.”

In addition to disclosures, the bill requires a person engaged in business as a commercial financing broker in Missouri to register prior to conducting business. “Broker” means a person who for compensation or the expectation of compensation obtains a commercial financing product or an offer for a commercial financing product from a third party that would, if executed, be binding upon the third party and communicates the offer to a business located in Missouri. The bill clarifies that a “provider” is not a “broker.” Further, receiving compensation in a certain manner could exclude a person from falling within the definition of “broker.”

The bill contains product and person exclusions. The disclosure and registration requirements do not apply to federally and state chartered banks and credit unions. These requirements also do not apply to certain secured commercial financing products, leases, or certain floor plan financing for motor vehicle dealers. While other exclusions are proposed, the bill does not currently include an exception for large-dollar business loans or lines of credit.

The bill’s scope and requirements could evolve as the bill makes its way through the Missouri legislature. The Missouri Division of Finance may also promulgate rules under the statute that provide more details on disclosures, registration, and exemptions.

Missouri bill and other state commercial financing statutes

If enacted, Missouri would join California, New York, Utah, and Virginia as states requiring disclosures for certain commercial financing products. Missouri would also join Utah and Virginia to require registration for entities involved in the offering of commercial financing products.

As more states pass laws to regulate commercial financing, variations in state commercial financing disclosure and registration statutes are emerging. For example, the Missouri bill is most similar to the Utah Commercial Financing Registration and Disclosure Act in terms of the disclosures required for commercial financing products; however, the Missouri bill is not a carbon copy of the Utah law. The disclosures are slightly different. Further, Utah law requires providers of commercial financing products to register whereas the Missouri bill requires brokers to register.

The California and New York commercial financing disclosure statutes are similar. The New York Department of Financial Services has endeavored to be consistent with the California commercial financing disclosure regulations when promulgating regulations under the New York Commercial

Financing Disclosure Law, yet the New York regulator warned in the latest proposed regulations that the New York regulations will not be identical to the California regulations for various reasons.

What this means to you

More and more states are enacting commercial financing disclosure and registration statutes. Nonbank business lenders, merchant cash advance providers, and fintechs partnering with depository institutions to offer commercial financing should track proposed and enacted legislation. These financial services providers should also consider multi-state compliance strategies to manage the emerging variations in state commercial financing statutes.

Contact us

For more information about commercial financing disclosure and registration statutes or their potential impact on your business, contact Susan Seaman or your Husch Blackwell attorney.