

Decoding State Commercial Financing Disclosure Laws, Floorplan Financing

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Floorplan financing exemptions in the new state commercial financing disclosure laws may not be as broad as lenders think.

Following in the footsteps of California in 2018, states across the nation — including Utah, Virginia, Florida, Georgia, Connecticut and New York — have enacted commercial financing disclosure and registration laws. Legislatures in Illinois, Kansas, Maryland, Mississippi, Missouri, New Jersey, North Carolina and Texas have also considered or are considering bills for similar requirements.

These disclosure laws require non-bank lenders and “providers” to give consumer-style written disclosures to recipients at the time of financing and, in some circumstances, again after funding. While most of these laws exempt floorplan financing over \$50,000, the exemptions are usually limited to new and used motor vehicle dealers as defined under state law.

Lenders providing financing to powersports, marine equipment and other equipment dealers may still be subject to these often-complicated disclosures, and possible lender registration.

State Rollouts, Deadlines and an Expanding Scope

California led the nation, making disclosure requirements effective as of Dec. 9, 2022. Utah followed with disclosures and registration requirements implemented after Jan. 1, and New York’s regulations required disclosures on or after Aug. 1. Florida and Georgia will require disclosures on or after Jan. 1, 2024, and Connecticut will require disclosures and registration beginning July 1, 2024.

Most state laws cover closed-end loans, open-end financing, lease financing, sales-based financing and invoice factoring transactions. The disclosure laws in Virginia and Connecticut are currently limited to sales-based financing transactions. However, comments from consumer groups and legislators indicate there will be a push to expand those laws to cover other financing options.

Commercial financing disclosure requirements apply to non-bank providers, including any person who extends a “specific offer of commercial financing” to a recipient. This includes many fintech companies, which solicit and present commercial financing offers on behalf of third-party lenders, including banks, which are exempt from

the law. Most states exempt individual transactions over \$500,000; New York covers transactions up to \$2.5 million.

Detailed Disclosures, Penalties

Disclosure requirements are largely based on the location of the recipient. Virginia covers recipients “whose principal place of business is in the commonwealth.” California and New York cover commercial financing transactions in which the recipient’s business is “principally directed or managed” within the state, or in the case of a recipient who is a person, the recipient is a legal resident of the state. Florida’s statute is a bit less specific, covering transactions “with a business located in this state,” which presumably applies to recipients with headquarters in Florida, but arguably could cover lending to businesses with a location in Florida.

California and New York again lead the way with the most prescriptive regulations, specifying formatting, content and signature requirements down to the font type and size, table column widths and decimal points in APR calculations. Disclosures must include:

- Total amount of funds provided;
- APR;
- Total dollar cost of the financing;
- Term (or estimated term), method, frequency and amount of payments; and
- A description of prepayment policies.

A separate itemization of funds that details amounts paid to other parties is also required. Lenders providing floorplan financing will need to carefully review the exemptions and draft compliant disclosures on a state-by-state basis.

Penalties for noncompliance range from \$500 per violation up to \$10,000, if willful, in California and New York. There have not been any public enforcement actions to date; however, reports indicate some lenders have pulled back in these states to avoid the onerous regulatory burdens and potential enforcement from overzealous agencies.

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