

Alert | Financial Regulatory & Compliance



September 2024

New Commercial Financing Laws Take Effect in Connecticut, Kansas

Connecticut and Kansas recently joined [California](#), [New York](#), [Florida](#), [Utah](#), [Virginia](#), and [Georgia](#) in enacting laws requiring lenders to provide consumer-like financing disclosures for certain commercial financing transactions. Like other jurisdictions' so-called "Business Truth in Lending" laws, Connecticut and Kansas's newly enacted laws cover, at a minimum, accounts receivable financing, factoring, and merchant cash advances.

Both laws took effect July 1, 2024, but Connecticut took a "no-action position" on companies providing the required disclosures until Sept. 30, 2024.

This GT Alert is intended to remind industry participants of the changes in these state laws requiring such disclosures and, potentially, registration with a state regulatory agency.

Connecticut

SB 1032, a commercial financing registration and disclosure law, requires providers of "sales-based financing" to provide disclosures to commercial borrowers beginning July 1, 2024, and register with the Connecticut Department of Banking by Oct. 1, 2024.

The law defines "sales-based financing" as "a transaction that is repaid by the recipient to the provider over time (A) as a percentage of sales or revenue, in which the payment amount may increase or decrease

according to the volume of sales made or revenue received by the recipient, or (B) 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.” At a minimum, the term brings accounts receivable financing, factoring, and merchant cash advances within its scope.

Significantly, the disclosure and registration requirements only apply to sales-based financing amounts up to \$250,000. Moreover, the law exempts the following entities from the requirements:

- Any bank, out-of-state bank, bank holding company, Connecticut credit union, federal credit union, out-of-state credit union, or any subsidiary or affiliate, as defined in applicable Connecticut law;
- Any person acting as a technology services provider to an entity exempt under SB 1032, as long as the technology services provider is not involved in or profiting from the commercial financing transactions made by the exempt entity;
- A lender regulated under the federal Farm Credit Act;
- Any person or provider who extends or brokers a commercial financing transaction secured by real property;
- Any person or provider who extends or brokers a lease, as defined in applicable Connecticut laws;
- Any person or provider who extends or brokers a purchase-money obligation, as defined in applicable Connecticut laws;
- Any person or provider who extends not more than five commercial financing transactions in Connecticut in a 12-month period;
- Any person or provider who extends or brokers a commercial financing transaction entered into pursuant to a commercial financing agreement or commercial open-end credit plan of at least \$50,000, in which the recipient is (i) a dealer, as defined in applicable Connecticut laws, or an affiliate of such a dealer, or (ii) a motor vehicle rental company, or an affiliate of such company; or
- Any person or provider who extends or brokers a commercial financing transaction relating to the sale of products or services that such person or provider manufactures, licenses, or distributes, or whose parent company, subsidiary, or affiliate manufactures, licenses, or distributes.

Disclosure Requirement

Since July 1, 2024, non-exempt commercial financing providers and commercial financing brokers have been required to provide the following disclosures when extending a specific offer of financing in Connecticut:

- The total amount of the financing;
- The disbursement amount;
- The finance charge;
- The total repayment amount;
- The estimated time period required for periodic payments;
- The payment amounts and frequency, or a payment schedule and the amount of the average projected payments per month;

- A description of all other potential fees and charges not included in the finance charge;
- Any finance charge the recipient is required to pay if the recipient prepays the repayment amount, with some exclusions;
- Any additional fees, not already included in the finance charge, if the recipient prepays the repayment amount;
- A description of collateral requirements or security interests;
- Whether the provider will pay compensation directly to a commercial financing broker out of the financed amount and, if so, the amount of the compensation; and
- If the provider requires the recipient to pay off the balance of an existing commercial financing from the same provider, the amount of the new commercial financing that is used to pay off the portion of the existing commercial financing that consists of prepayment charges required to be paid and any unpaid interest expense that was not forgiven at the time of renewal.

The Connecticut Department of Banking published guidance and a commercial financing disclosure form a few weeks prior to the July 1, 2024, effective date and issued a “no-action position,” stating that it will not take enforcement action for a provider’s failure to provide the required disclosures for specific offers of commercial financing issued from July 1 to Sept. 30, 2024. Providers have until Oct. 1, 2024, to comply with the disclosure requirement, which coincides with the date upon which such providers must be registered with the Department of Banking for such activities.

Please note that the exact disclosures required may vary based on the specifics of the financing transaction. To ensure compliance, market participants should consider reviewing the entire text of SB 1032 and consulting with legal counsel to ascertain the exact disclosures required with respect to any applicable financing transaction.

Registration Requirement

The Connecticut Department of Banking recently released applications through the Nationwide Multistate Licensing System & Registry (NMLS) for a Commercial Financing Broker Registration and Commercial Financing Provider Registration. The applications are relatively light and do not require providers to submit much supplementary information beyond what is contained in the company MU1 Form. Providers may wish to submit their applications in short order, as the state will require all non-exempt providers to register with the Department of Banking by Oct. 1.

Kansas

Kansas enacted **SB 345**, a commercial financing disclosure law that took effect July 1, 2024. Like the laws of predecessor states, the Kansas law requires a commercial financing provider to disclose to a business receiving a “commercial financing transaction” the terms of such financing before or at the time of consummating the transaction. The law defines “commercial financing transaction” as “any commercial loan, accounts receivable purchase transaction and commercial open-end credit plan when the transaction is a business purpose transaction.” As is the case with the Connecticut law, at a minimum, the term appears to bring accounts receivable financing, factoring, and merchant cash advances within its scope.

Importantly, SB 345 only requires disclosures for commercial financing transactions in amounts of \$500,000 or less, and it does not include a registration requirement. Moreover, the law exempts the following entities and transactions from the disclosure requirement:

- Any provider that is a depository institution, as defined in applicable Kansas law, or its parent company or a subsidiary or service corporation that is (1) owned and controlled by a depository institution and (2) regulated by a federal banking agency;
- Any provider that is a lender regulated under the federal Farm Credit Act;
- Any provider that is licensed as a money transmitter in accordance with applicable Kansas law;
- Any provider that consummates not more than five commercial financing transactions in Kansas in a 12-month period;
- A commercial financing transaction that is (1) secured by real property; (2) a lease; or (3) a purchase money obligation that is incurred as all or part of the price of the collateral or for value given to enable the business to acquire rights in or the use of such collateral if such value is so used; and
- A commercial financing transaction in which the recipient is a motor vehicle dealer or a vehicle rental company, or an affiliate of a motor vehicle dealer or vehicle rental company or an affiliate of such a company pursuant to a commercial loan or commercial open-end credit plan of at least \$50,000 or a commercial financing transaction offered by a person in connection with the sale or lease of products or services that such person manufactures, licenses, or distributes or whose parent company or any of such parent company's directly or indirectly owned and controlled subsidiaries manufactures, licenses, or distributes.

Disclosure Requirement

Since July 1, 2024, entities engaging in “commercial financing transactions” in Kansas must provide the following disclosures to prospective borrowers:

- The total amount of funds provided;
- Total amount of funds disbursed;
- Total payments;
- Total dollar cost of financing;
- Manner, frequency, and amount (or estimated amount) of each payment; and
- Whether there are any costs or discounts associated with payment.

If the transaction constitutes a “commercial financing facility,” then only one disclosure must be provided. SB 345 defines the term “commercial financing facility” to mean a provider’s plan for purchasing multiple accounts receivable from the recipient over a period of time pursuant to an agreement that sets forth the terms and conditions governing the use of the facility.” As a result, certain factoring or accounts receivable financing transactions may require only a single disclosure, depending upon the structure of the transaction.

The state has not released a template disclosure form, and SB 345 does not require the disclosures to be signed by the recipient. Accordingly, it appears that commercial financing disclosure templates utilized to

comply with similar requirements elsewhere may satisfy the requirements of SB 345, so long as the template contains the minimum information described above.

Takeaways

Enhanced regulation of commercial financing transactions remains a focus for many states, and more states may enact laws like those enacted by Connecticut and Kansas in the upcoming legislative sessions. The next “Business Truth in Lending” laws may be enacted in **Illinois**, **Maryland**, and **Missouri**, as such laws have been proposed for the upcoming legislative sessions. Given the developments across other states, these bills may pass with language similar to laws enacted by predecessor states.

Authors

This GT Alert was prepared by:

- **Lisa M. Lanham**[‡] | +1 305.579.0500 | Lisa.Lanham@gtlaw.com
- **Shane Foster** | +1 602.445.8037 | Shane.Foster@gtlaw.com
- **Rinaldo Martinez** | +1 202.331.3186 | Rinaldo.Martinez@gtlaw.com

[‡] Admitted in New York and Pennsylvania. Not admitted in Florida.

Albany. Amsterdam. Atlanta. Austin. Berlin.[~] Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Kingdom of Saudi Arabia.[«] Las Vegas. London.^{*} Long Island. Los Angeles. Mexico City.⁺ Miami. Milan.[»] Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Diego. San Francisco. São Paulo.[›] Seoul.[∞] Shanghai. Silicon Valley. Singapore.[~] Tallahassee. Tampa. Tel Aviv.[^] Tokyo.[•] United Arab Emirates.[◁] Warsaw.[~] Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ~Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. «Greenberg Traurig operates in the Kingdom of Saudi Arabia through Greenberg Traurig Khalid Al-Thebity Law Firm, a professional limited liability company, licensed to practice law by the Ministry of Justice. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ›Greenberg Traurig's São Paulo office is operated by Greenberg Traurig Brazil Consultores em Direito Estrangeiro – Direito Estadunidense, incorporated in Brazil as a foreign legal consulting firm. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ~Greenberg Traurig's Singapore office is operated by Greenberg Traurig Singapore LLP which is licensed as a foreign law practice in Singapore. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¢Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimbengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ◁Greenberg Traurig's United Arab Emirates office is operated by Greenberg Traurig Limited. ~Greenberg Traurig's Warsaw office is operated by GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2024 Greenberg Traurig, LLP. All rights reserved.*