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## Florida Enacts Commercial Financing Disclosure Law, Mandatory Compliance Date January 1, 2024

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Florida has enacted its own Commercial Financing Disclosure Law ("CFDL") that is similar to California and New York's disclosure laws. The Florida CFDL applies to covered "**Commercial Financing Transactions**" consummated on or after January 1, 2024 that are \$500,000 or less and originated by a covered "**Provider**."

### *Where to Find the Florida Commercial Financing Disclosure Law*

The Florida CFDL is found at [Florida Statutes Chapter 559, Sections 559.961, et seq.](#)

### *"Provider" Defined; Exemptions*

A covered commercial financing transaction must be made by a covered "**Provider**" as defined in the CFDL. *Provider* has dual meanings in the CFDL as follows:

- Any person "who consummates **no more than five commercial financing transactions with a business located in this state in any calendar year.**" *In any calendar year* is not the phrase used consistently in the Florida law to define covered vs excluded commercial financing transactions. This phrase is used interchangeably with Section 559.9612(6) exclusion of transactions made by "a provider that consummates no more than five commercial financing transactions in this state in a 12-month period." [See below.] In addition, *business located in this state* is vaguely written in that it could mean a borrower's principal location (headquarter) or alternatively, a business address provided by the borrower on their commercial financing application that corresponds to a branch location where the subject collateral will be situated.
- "[A] person who enters into a written agreement with a depository institution to arrange a commercial financing transaction between the depository institution and a business via an online lending platform administered by the person."

[FL Stats. § 559.9611(10).]

Elsewhere in Florida Statutes Section 559.9612, the Florida CFDL excludes from its scope of coverage any Provider that is a federally insured depository institution, or an affiliate or holding company of that institution. [FL Stats. § 559.9612(1)(a).] The Florida law also excludes from its scope of coverage "a

subsidiary or service corporation that is owned and controlled by a federally insured depository institution or under common ownership with such institution.” [FL Stats. § 559.9612(1)(b).]

### *Scope of Covered “Commercial Financing Transactions”*

To be a covered “commercial financing transaction,” the following elements are met:

**(1) The transaction meets the definition of “commercial financing transaction” in Section 559.9611.**

A covered *Commercial Financing Transaction* is defined in the CFDL to mean (a) **a commercial loan** (meaning, a closed-end loan to a business, whether secured or unsecured); (b) **an accounts receivable purchase transaction** (including “commercial financing facility” that contemplates a provider purchasing multiple accounts receivable from a recipient over a period of time); *or* (c) **a commercial open-end credit plan** that contemplates repeat transactions that are repaid during the financing term. The Florida CFDL definition of “commercial financing transaction” is more narrow in scope than its California and New York counterparts in that commercial lease financing transactions are not included in its coverage. [FL Stats. § 559.9611(6).]

**(2) CFDL Financing Transaction Exclusions.**

The Florida law lists categories of commercial financings that are not subject to the CFDL disclosure requirements. The CFDL excludes from coverage:

- Any “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 the collateral if the value is in fact so used.” [FL Stats. § 559.9612(3)(c).]
- A (true) lease transaction. [FL Stats. § 559.9612(3)(b).]
- A commercial financing that is secured by real property. [FL Stats. § 559.9612(3)(a).]
- Commercial financing transactions exceeding the CFDL dollar threshold of \$500,000. [FL Stats. § 559.9612(7).] The Florida law does not indicate how the threshold dollar amount is measured, such as “loan amount,” “amount financed, or other.
- A provider that consummates no more than five commercial financing transactions in this state in a 12-month period. [FL Stats. § 559.9612(6).] As noted above, the time period used in the statutory definition of “Provider” is “calendar year,” not “12-month period.” Due to this inconsistency in drafting, best practice would be to forecast the number of future financings under both time periods and apply this *de minimis* exemption most conservatively.
- A commercial financing that is not a new loan but rather a modification, forbearance, or change to a consummated commercial financing transaction. [FL Stats. § 559.9613(1).]
- Certain commercial loans and open-end credit plans made to a motor vehicle dealer, a vehicle rental company or their affiliates. [FL Stats. § 559.9612(4).]

***Enforcement; Penalties for Violation of Florida CFDL***

The Florida Attorney General is given exclusive authority to enforce the CFDL subject to statutory penalty provisions [FL Stats. § 559.9615(1)(a), (c)]; the CFDL does not create a private right of action for alleged violations. For each first time violation, the statutory penalty is \$500 (maximum aggregate penalty of \$20,000); for each repeat violation, the statutory penalty is \$1,000 (maximum aggregate penalty of \$50,000). In addition, a violation of the Florida law does not render a covered commercial financing transaction void and unenforceable. [FL Stats. § 559.9615(2)(c).] No further rulemaking to implement the Florida CFDL is imposed on the Attorney General by statute.

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Please reach out to any of the Buchalter's Commercial Finance Group members below for assistance in understanding how the Florida Commercial Financing Disclosure Law impacts your financial services company, as well as for readying your company for Florida's mandatory compliance date, January 1, 2024.



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