

August 29, 2023

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

By: [Melissa Richards](#)

Georgia has enacted its own Commercial Financing Disclosure Law ("CFDL") that is similar to California, Florida and New York's disclosure laws. The Georgia 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**." The disclosure document itself is an early disclosure, to be provided one time for each commercial financing transaction prior to consummation.

Where to Find the Georgia Commercial Financing Disclosure Law

SB90 (2023), the Georgia CFDL is added to the Georgia "Fair Business Practices Act" at Title 10, Official Code of Georgia Annotated, Sections 10-1-393.18, *et seq.* Click [HERE](#) to read.

Covered "Commercial Financing Transactions" Defined; Excluded Transactions

The Georgia CFDL defines "**Commercial Financing Transaction**" as a "business purpose transaction that is made to a business or intended to be used to carry on the business, with a primary purpose that is not intended for personal, family or household (traditional consumer) purposes. The types of Commercial Financing Transactions that are covered under SB 90 include commercial loans, commercial open-end credit plans, and accounts receivable purchase transactions. [GA Code Ann. §§ 10-1-393.19(a)(5), (6).]

Commercial financing transactions outside SB90's scope of coverage are:

- Commercial financing transactions secured by real property.
- Commercial "Lease" transactions as defined in GA Code Section 11-2A-103.
- Commercial "Purchase Money Obligation" as defined in GA Code Section 11-9-103.
- Commercial loans and open-end lines of credit of \$50,000 or more that are made to a motor vehicle dealer or the dealer's affiliate, or a motor vehicle rental company as defined in GA Code Section 40-2-167 or the rental company's affiliate.
- Commercial financing transaction offered by a person in connection with the sale or lease of a product or service that the person (or their parent company and its subsidiaries) manufactures, licenses or distributes.
- Commercial financing transactions of more than \$500,000.
- Commercial financing product that is a factoring transaction, purchase, sale, advance, or similar of accounts receivables owed to a healthcare provider because of a patient's personal injury treated by the healthcare provider.

- A disclosure is not required as a result of the modification, forbearance, or change to a consummated covered commercial financing transaction.

[GA Code Ann. §§ 10-1-393.19(b), (e)(2).]

“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 in this state during any calendar year.**” *In any calendar year* is not the phrase used consistently in the Georgia law to define covered vs excluded commercial financing transactions. This phrase is used interchangeably with the Section 10-1-393.19(b)(5) exclusion of transactions made by “a provider that consummates five or fewer commercial financing transactions in the state during any 12-month period.” [See below.]
- Any person who, under a written agreement with a depository institution, offers one or more commercial financing products provided by the depository institution via an online lending platform that the person administers. This category of Provider that extends a specific offer for a commercial financing transaction on behalf of a depository institution is expressly declared by SB90 not to be engaging in lending or financing or originating that loan or financing, activities that could open the provider up to further Georgia lending, licensing and usury laws.

[GA Code Ann. § 10-1-393.19(a)(10).]

Elsewhere in SB 90, the Georgia CFDL excludes from its scope of coverage any Provider that is a federally insured depository institution, or a subsidiary, service corporation, affiliate or holding company of that institution. [GA Code Ann. § 10-1-393.19(b)(1). (2).] SB 90 also exempts the following providers from the Georgia CFDL disclosure requirements:

- A provider that consummates five (5) or fewer commercial financing transactions in the state during any 12-month period.
- A provider that is regulated under the federal Farm Credit Act.
- Any money transmitter that is licensed under Title 7, Georgia Code Annotated Chapter 1, Article 4.

[GA Code Ann. § 10-1-393.19(b).]

Required Disclosure Items Similar to the federal Truth in Lending Act; Mandatory Compliance Begins in 2023.

While the early disclosure requirement required in SB 90 applies to “any commercial financing transaction consummated on or after January 1, 2024,” Section 10-1-393.19(e)(1) requires the disclosure to be delivered to the prospective borrower “before consummating a commercial financing transaction.” As a result, mandatory compliance with SB 90 can occur in 2023.

The mandated disclosure items resemble the federal Truth in Lending Act for consumer credit transactions. They are:

- The total amount of funds provided to the business borrower (Funding Provided).
- The total amount of funds disbursed to the business, if less than the amount of Funding Provided (Amount Financed).
- The total amount to be paid to the Provider (Finance Charges).
- The total dollar cost of the commercial financing transaction (Annual Percentage Rate).
- The manner, frequency and amount of each payment (Payment Schedule).
- If the amount of each payment may vary, the manner, frequency and estimated amount of the initial payment. Also include the methodology for calculating any variable payment amount and the circumstances that may cause a payment amount to vary.
- A statement of whether there are any costs or discounts associated with prepayment, including a reference to the paragraph in the commercial financing transaction agreement that creates each cost or discount (Prepayment).

[GA Code Ann. § 10-1-393.19(e)(3).]

Enforcement; Penalties for Violation of Georgia CFDL

The Georgia Attorney General is given exclusive authority to enforce the CFDL subject to statutory penalty provisions [GA Code Ann. § 10-1-393.19(g)]; the CFDL does not create a private right of action for alleged violations [GA Code Ann. § 10-1-393.19(j)] and a violation of the Georgia CFDL shall not affect the enforceability of any underlying commercial financing transaction agreement [GA Code Ann. § 10-1-393.19(k)]. 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) [GA Code Ann. §§ 10-1-393.19(h), (i)]. No further rulemaking to implement the Georgia CFDL is imposed on the Attorney General by statute.

* * *

Please reach out to any of the Buchalter's Commercial Finance Group members below for assistance in understanding how Georgia's SB 90 Commercial Financing Disclosure Law impacts your financial services company, as well as to help ready your company for Georgia's mandatory compliance date, on or before January 1, 2024.



Melissa Richards

Of Counsel
(415) 227-3543
mrichards@buchalter.com



Benjamin Heuer

Shareholder
(916) 945-5195
bheuer@buchalter.com



Michael Flynn

Of Counsel
(303) 253-6750
mflynn@buchalter.com



Robert Zadek

Of Counsel
(415) 699-2512
rzadek@buchalter.com

AZ | CA | CO | OR | UT | WA
BUCHALTER.COM

This communication is not intended to create or constitute, nor does it create or constitute, an attorney-client or any other legal relationship. No statement in this communication constitutes legal advice nor should any communication herein be construed, relied upon, or interpreted as legal advice. This communication is for general information purposes only regarding recent legal developments of interest, and is not a substitute for legal counsel on any subject matter. No reader should act or refrain from acting on the basis of any information included herein without seeking appropriate legal advice on the particular facts and circumstances affecting that reader. For more information, visit www.buchalter.com.