

## Introducing BizFinLaw

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CounselorLibrary is proud to introduce *BizFinLaw*, a legal reporter to help providers of business finance navigate the evolving landscape of state and federal law. Subscribers of *BizFinLaw* can stay up to date on legal developments that impact the small business finance industry, including:

- Track state and federal legislation;
- Follow state and federal regulatory actions;
- Receive alerts regarding new court decisions; and
- Legal news and industry events.

*BizFinLaw* is powered by Hudson Cook, LLP's deep knowledge of consumer financial services laws and where those laws intersect with small business finance. Our Editors in Chief, Kate Fisher and Robert Gage, have been on the forefront of small business finance legal developments. Here is a round-up of recent developments reported in *BizFinLaw*:

### **Federal Developments**

On May 16, 2024, the U.S. Supreme Court, in a 7-2 decision, provided the Consumer Financial Protection Bureau with a victory in a case that had the potential to significantly limit the CFPB's funding and its ability to enforce past and future rules. In *Consumer Financial Protection Bureau v. Community Financial Services Association of America, Ltd.*, the Supreme Court reversed a 2022 decision by the U.S. Court of Appeals for the Fifth Circuit that held that the funding structure of the agency violated the Appropriations Clause of the U.S. Constitution (the "CFSA case"). Many observers believe the decision will result in an intensification of the CFPB's enforcement and rulemaking activities. *BizFinLaw* published an [analysis](#) of this decision shortly after it was issued.

The CFSA case had an immediate impact on another case called *Texas Bankers Association v. Consumer Financial Protection Bureau*, in which a Texas court stayed the compliance deadlines for the Small Business Lending Rule promulgated by the CFPB to implement Section 1071 of the Dodd-Frank Act. The decision in the CFSA case led the Texas court to lift its stay, which had been in effect for 290 days. As a result, the CFPB was obliged to issue updated compliance deadlines to account for the 290-day period of

the stay. *BizFinLaw* published an [alert](#) on that development on June 28, 2024.

## State Developments

In April, *BizFinLaw* [reported](#) that Kansas Governor Laura Kelly signed Senate Bill 345, which establishes disclosure requirements for commercial financing transactions of \$500,000 or less. The new law takes effect on July 1, 2024.

In June, *BizFinLaw* issued an [alert](#) stating that the Connecticut Department of Banking ("DOB") had issued its long-awaited disclosure template for sales-based financing transactions. Connecticut's sales-based financing disclosure law was enacted in late 2023, with an effective date of July 1, 2024. The law requires providers of sales-based financing to use a disclosure template provided by the DOB. Just weeks before the July 1 deadline, the DOB issued its template. Understanding that this left the industry with insufficient time to implement the new template into their origination processes, the DOB also issued a [statement](#) that it would take no enforcement action on disclosures from July 1, 2024, through September 30, 2024.

## Significant Litigation

*BizFinLaw* reported on two notable decisions in New York that were mostly favorable to providers of sales-based financing. In [\*Capybara Capital, LLC v. Affordable Construction Company, LLC\*](#), a New York state court agreed that a sales-based financing was not a disguised loan subject to New York's usury laws, noting that the merchant's repayment obligation was contingent rather than absolute. The court analyzed the agreement between the funder and the merchant using the familiar "three factor" test laid out by prior courts for evaluating these transactions. However, the court refused to enforce contract provisions for default fees and stop payment fees on the grounds that these fees were unenforceable penalties and not liquidated damages. This is one of the first New York courts to analyze these fee provisions, which are common in agreements for sales-based financing.

The second case, [\*Reserve Funding Group LLC v. California Organic Fertilizers, Inc.\*](#), was decided in a federal court in New York's Eastern District. In this case, the court refused to grant a motion to dismiss on the grounds that the sales-based financing was a usurious loan. The case may be most notable for the fact that it declined to follow a similar case from the Eastern District, [\*AKF, Inc. v. Western Foot & Ankle Center\*](#), in which a court applied a very aggressive (and arguably incorrect) interpretation of the "three factor" test developed by New York state courts to determine if a sales-based financing is a disguised loan.

For a personal guided tour and free trial of *BizFinLaw*, please contact Michael Willer (614-855-0505 or [mwiller@counselorlibrary.com](mailto:mwiller@counselorlibrary.com)).

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