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New Illinois Predatory Loan Prevention Act Leaves Lenders and Borrowers with Uncertain Future

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Illinois Governor J.B. Pritzker signed the Illinois Predatory Loan Prevention Act (Act) into immediate effect on March 23. The Act imposes sweeping changes and contains broad language, leaving the state's lenders and borrowers with an uncertain future.

To understand this new law, one must recognize that Illinois based the Act on the federal government's Military Lending Act (MLA), which instituted an annual percentage cap for loans to service members by stating that "lenders could not charge active duty, guard, or reserve service members or their dependents an interest rate higher than 36%."[1] The MLA contains an inclusive definition for calculating the APR, typically referred as the MAPR. In addition to the interest rate, the MAPR includes fees, and charges imposed for credit insurance, debt cancellation and suspension, and other credit-related ancillary products sold in connection with the transaction. If voluntary, these are excluded from the calculation of the normal APR.

These measures intended to provide extra protection from lending practices that "could pose risks for service members and their families," while also promoting military readiness and service member retention.[2] In other words, Congress attempted to set the MAPR to meet the needs of a particular group. With respect to loan products under the MLA, lenders cannot charge interest and fees that, when added together, would exceed a 36% MAPR.[3]

The Act applies the MLA's lending rules to all Illinois consumers and drastically increases the scope beyond that of the MLA. The Act reads, "[t]he purpose of this Act is to protect consumers from predatory loans consistent with federal law and the Military Lending Act which protects active duty members of the military. This Act shall be construed as a consumer protection law for all purposes. This Act shall be liberally construed to effectuate its purpose."[4] Far from limiting the application to a group with specific gaps in its coverage, the Illinois law grants the MARP to all consumers and applies the Act to all transaction types. In doing so, the Act has left lenders scrambling to create agreements that not only benefit their borrowers, but also keep the transactions profitable.

The Act also applies to all parties that offer or make loans in the state of Illinois, and it attempts to make banks and other regulated financial service providers involved in partnership arrangements with nonbanks the true lender under Illinois law.[5] While "[b]anks, savings banks, saving and loan associations, credit unions, and insurance companies … are exempt from the provisions of this Act,"[6] the Act is drafted to make it very difficult for nonbank lenders to partner with these institutions by including "true lender" concepts to these arrangements, including the nebulous predominant economic interest theory. The Act does this by stating that it applies to nonbank partners or regulations institution if "(1) the person or entity holds, acquires, or maintains, directly or indirectly, the predominant economic interest in the loan; or (2) the person or entity markets, brokers, arranges, or facilitates the loan and holds the right, requirement, or first right of refusal to purchase loans, receivables, or interests in the loans; or (3) the totality of the circumstances indicate that the person or entity is the lender and the transaction is structured to evade the requirements of this Act. Circumstances that weigh in favor of a person or entity being a lender include, without limitation, where the person or entity: (i) indemnifies, insures, or protects an exempt person or entity for any costs or risks related to the loan; (ii) predominantly designs, controls, or operates the loan program; or (iii) purports to act as an agent, service provider, or in another capacity for an exempt entity while acting directly as a lender in other states."

Unable to justify the risks related to a loan or navigate the limitless true lender language, many lenders will refuse to make loans to Illinois consumers because of the Act, either directly or through a bank partnership model since it is not possible for them to make profitable loans at the restricted rate. Future studies will no doubt document how the Act negatively affects Illinois consumers.[7]

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[1] 10 U.S.C.A. § 987 (West).

[2] FDIC Consumer Compliance Examination Manual – September 2016.

[3] FDIC Consumer Compliance Examination Manual – September 2016, page 1. "For covered transactions, the MILA and the implementing regulation limit the amount a creditor may charge, including interest, fees, and charges imposed for credit insurance, debt cancellation and suspension, and other credit-related ancillary products sold in connection with the transaction. The total charge, as expressed through an annualized rate referred to as the Military Annual Percentage Rate may not exceed 36%. The MAPR includes charges that are not included in the finance charge or the annual percentage rate disclosed under the Truth in Lending Act."

[4] Igla, Amendment to Senate Bill 1792, page 54.

[5] Igla, Amendment to Senate Bill 1792, page 55.

[6] "…organized, chartered, or holding a certificate of authority to do business under the laws of this State or any other state or under the laws of the United States…" *Id.*

[7] Lisa Chen and Gregory Elliehausen (2020). "The Cost Structure of Consumer Finance Companies and Its Implications for Interest Rates: Evidence from the Federal Reserve Board's 2015 Survey of Finance Companies," FEDS Notes. Taskforce on Federal Consumer Financial Law Report, Volume II, page 94. Online Lenders Alliance letter of disapproval to Governor Pritzker.

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