DREHER TOMKIES LLP

ALERT

FOR CLIENTS AND FRIENDS OF DREHER TOMKIES LLP

January 20, 2021

ILLINOIS BILL CAPS INTEREST ON CONSUMER LOANS AT 36%

On January 13, 2021, the Illinois state legislature passed a bill that would prohibit lenders from charging more than 36% APR on all consumer loans. The legislation, titled the Predatory Loan Prevention Act, applies to all non-commercial loans, including closed-end and open-end credit, retail installment sales contracts and motor vehicle retail installment sales contracts.

The Act broadly defines "lender" to include any (i) affiliate or subsidiary of a lender or (ii) person or entity that buys a whole or partial interest in a loan, arranges a loan for a third party or acts as an agent for a third party in making a loan. The definition of "lender" also includes any other person or entity if the Department of Financial and Professional Regulation determines that the person or entity is engaged in a transaction that it is in substance a disguised loan or a subterfuge for the purpose of avoiding this Act.

The Act exempts federal and state-chartered banks. The Act includes a "no evasion" provision that emphasizes that a person or entity is a lender subject to the requirements of the Act notwithstanding the fact that the entity purports to act as an agent, service provider or in another capacity for another entity that is exempt from the Act, if, among other things: (i) the entity holds, acquires or maintains, directly or indirectly, the predominant economic interest in the loan, (ii) the 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 (iii) the totality of the circumstances indicate that the entity is the lender and the transaction is structured to evade the requirements of the Act.

The Act requires lenders subject to its requirements to calculate the 36% APR using the system for calculating a military APR under Section 232.4 of the Military Lending Act. The Act provides that any loan made in excess of 36% APR would be considered null and void and no entity will have any right to collect, attempt to collect, receive or retain any principal, fee, interest or charges related to the loan.

The Act will take effect immediately once signed. We will continue to monitor the status of the legislation and keep you updated. If you have any questions, please let us know. ❑

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