Missouri and Washington Introduce True Lender Bills

April 01, 2024

Missouri and Washington introduced new true lender bills intended to regulate companies, largely FinTechs, that operate under bank partnership models with federally insured depository institutions. Under these models, the partner bank originates the consumer loan or line of credit, and the non-bank partner engages in activities for the bank, including but not limited to facilitating, brokering, servicing, and collection activities.

Many states have enacted or proposed consumer credit laws designed to regulate companies that operate under bank partnership models with federally insured depository institutions, or that otherwise seek to regulate service providers to banks. Debt collector licenses are a traditional example, while the new "true lender" laws represent a more expansive attempt to curtail activities for bank and non-bank partnerships. Generally, these laws are structured to exempt depository institutions while regulating the non-bank entities with whom they partner, by treating the non-bank as if it is the lender in the credit transactions—i.e., the "true lender." The true lender language in the Washington bill is more limited than other true lender laws in terms of the tests employed, but it contains two primary tests seen in prior legislation: the predominant economic interest standard and a totality of the circumstances test. Washington and Missouri's bills both incorporate anti-evasion provisions, similar to prior legislation (previously enacted in Illinois, Maine, Minnesota, and New Mexico; proposed in the District of Columbia, Maryland, and Florida).

Missouri introduced HB 2642 to add six new sections relating to small loans and consumer installment loans, including an all-in rate cap of 36 percent and anti-evasion provisions. Under HB 2642, a person is prohibited from offering, making, assisting a borrower in obtaining, or brokering a loan, in whole or in part, from a third party or while acting as an agent for a third party, regardless of whether the third party is exempt from licensing; from charging, if authorized under any applicable section of Missouri law, any application fee for providing credit or any fee for participation in a credit plan without including the fee in the calculation of the annual percentage rate ("APR") as prescribed; and from making, assisting a borrower in obtaining, or brokering a loan at an APR that exceeds the permitted APR. The proposed new section provides that combined interest, fees, and finance charges cannot exceed an APR of 36 percent. Further, small loans, consumer installment loans, and title loans will be subject to this rate cap.

Washington's SB 6025 was signed by the governor on March 25. The bill proposes that the license requirement under the Consumer Loan Act ("CLA") would apply to each "loan" made by a licensee, or persons subject to the CLA, to a resident of or a person physically located in Washington. The bill also proposes true lender language, including the predominant economic interest standard, the prohibition applicable to bank agents and servicers, and a totality of the circumstances test. SB 6025 appears to incorporate the provisions from its companion bill, HB 1874, that define "loan" and impose a residency requirement when determining whether the CLA applies.

As more states begin to put forth legislative proposals that mirror existing true lender legislation, it is apparent that regulating bank partner programs is a priority among some legislators and consumer advocates as these programs continue to expand and gain further popularity among consumers. We would expect more true lender legislation on the horizon.

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