

LEGAL UPDATES

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A Quick Recap of the New Illinois Buy-Now-Pay-Later Act

In late June, the Illinois Governor signed SB3561 making Illinois the second state after New York to enact a lending law that specifically regulates buy-now-pay-later (BNPL) loans. Compliance with the Illinois Buy-Now-Pay-Later Loan Consumer Protection Act is required on January 1, 2028 or a later date determined by the Illinois Department of Financial and Professional Regulation (Department). Below is a quick summary of key provisions of the new Illinois BNPL Act.

Applicability of Act

Products Covered. The Illinois BNPL Act regulates a narrow category of point-of-sale installment loans. Under the Act, “buy-now-pay-later loans” means closed-end loans provided to finance a particular purchase of goods or services that: (1) is payable in four or fewer installments; or (2) has a term of 120 days or less. Both interest-free and interest-bearing loans are covered.

Notably, the Act permits the Department to expand the definition of “buy-now-pay-later loans” by rule to include any other loan. The scope of the Illinois BNPL Act could be expanded in the future.

The Act does not apply to loans for a motor vehicle, credit sales, residential mortgage loans, business loans, and open-end credit.

Persons Subject to the Act. While the products covered by the Act are narrow, the Illinois BNPL Act applies to a broad spectrum of persons involved in BNPL loan transactions, including potentially lead generators, brokers, lenders, loan purchasers, servicers, and other service providers.

The Illinois BNPL Act contains anti-evasion language and a statutory “true lender” provision that explains when a person other than the stated lender is a lender subject to the Act.

The Act does not apply to banks, credit unions, and certain insurance companies. The Act also contains conditional exceptions for merchants, merchant platforms, and passive investors. The Department could exempt other persons from the Act by rule.

The Act's Substantive Provisions

Some of the substantive requirements and restrictions under the Illinois BNPL Act include:

A license is required to engage in the business regulated by the Illinois BNPL Act. Persons holding licenses under other Illinois credit laws may be exempt from licensing.

A lender must have reasonable risk-based underwriting policies and procedures that include certain minimum components. The Act requires a lender to disclose factors considered in the underwriting process to a consumer.

A lender must consider a consumer's financial ability to repay a BNPL loan before providing the loan.

The Act requires certain disclosures to consumers at the time of extending a specific loan offer including; for example, how to file a complaint with the Department, how to submit billing disputes, and whether the loan will be reported to a credit bureau.

The Act places obligations on lenders to resolve disputes in a fair and transparent manner and to provide consumers with a clear method of filing a dispute with a lender. Refunds must also be handled in a manner that is fair, transparent, and not unduly burdensome to consumers.

Under the Act, BNPL loans must follow the dispute rights and unauthorized transactions requirements that apply to credit cards (and open-end credit) under Regulation Z.

The Act contains restrictions on loan repayment including restrictions on requiring auto pay, required payment by credit card, and re-presenting payments that failed for non-sufficient funds.

Tips and expedited payment fees are expressly prohibited. The Department has broad authority to limit other fees.

BNPL loans must follow Illinois' all-in 36% APR cap under the Predatory Loan Prevention Act.

Other Notable Provisions

When evaluating the Illinois BNPL Act, financial services providers should also consider:

The Act gives the Department broad rulemaking authority including the ability to define improper, deceptive, unfair, abusive, or fraudulent business practices in connection with providing products and services under this Act.

A loan made by an unlicensed or unexempt person is void.

Compliance with the Illinois BNPL Act renders some other Illinois lending laws inapplicable, but not all of them.

A violation of the Illinois BNPL Act constitutes an unlawful practice under the Illinois Consumer Fraud and Deceptive Business Practices Act.

Provisional licensing for persons engaging in BNPL loans in Illinois before January 1, 2028 may be available.

Reflections on the Act

The Illinois BNPL Act gives us another view on how states may approach regulating BNPL loans. While Illinois chose to regulate a narrower set of installment financing products, the Illinois BNPL Act is otherwise broadly applicable to various persons in a BNPL loan transaction. Rulemaking under the Illinois BNPL Act should be monitored by all point-of-sale installment lenders. The Department can expand the scope of the Illinois BNPL Act in the future.

If the Illinois BNPL Act applies, point-of-sale installment lenders must follow product restrictions that do not appear in traditional credit laws and that have historically applied to open-end credit products.

The Illinois BNPL Act is not a carbon copy of the New York BNPL Act. One of the notable differences is that the Illinois BNPL Act is more focused on pay-in-4 BNPL loans than point-of-sale installment financing generally. The Illinois BNPL Act adds to the patchwork of state regulations for pay-in-4 BNPL loans.

Contact Us

We regularly advise depository and non-depository institutions on secured and unsecured POS financing products and understand the unique regulatory considerations involved with offering financing in different verticals. If you have any questions about the Illinois BNPL Act, please contact Susan Seaman or your Husch Blackwell attorney.