Testimony of Lauren Saunders, Associate Director
National Consumer Law Center
In Support of H-7941 Regarding Interest and Usury (Potter)
House Corporations Committee
Rhode Island State Senate

March 25, 2024

Dear Chair Solomon, Vice Chair O'Brien, and Members of the Committee:

I am the Associate Director of the National Consumer Law Center, a non-profit working for economic justice for vulnerable consumers. We publish a treatise, Consumer Credit Regulation, which discusses state lending laws and attempts to evade them, and an annual report, Predatory Installment Lending in the States, which surveys all 50 states' interest rate caps on certain installment loans, and most recently, Larger Loans Need Lower Rates: A 50-State Survey of the APRs Allowed for a $10,000 Loan.

We are pleased to support H-7941, which opts Rhode Island out of a federal law that predatory lenders use to circumvent state interest rate limits. The bill would stop predatory lenders from charging up to 225% interest in violation of Rhode Island law.

Our High-Cost Rent-a-Bank Loan Watch List shows that Rhode Island has many predatory rent-a-bank lenders evading the state's interest rate laws. For example, these nonbank lenders are currently offering loans in Rhode Island:

- Enova, which makes NetCredit-branded installment loans up to 99.99% APR.
- LoanMart, which makes auto title loans (under the ChoiceCash brand) at rates up to 170% APR.
- OppFi (Opportunity Financial), which makes installment loans at rates up to 160% APR.
- CNG, the parent company of the payday lender Check 'n Go, which makes installment loans under the Xact brand at APRs of 145% to 225%.
- Duvera Billing Services dba EasyPay Finance, which charges up to 188.99% APR for loans offered through businesses across the country that sell auto repairs, furniture, home appliances, pets, wheels, and tires, among other items.

- American First Finance, which makes installment loans for purchases at retailers including furniture, appliances, home improvements, pets, auto and mobile home repair, jewelry, and body art at rates up to about 161% APR.

Nonbank lenders claim to be able to ignore Rhode Island law because the loans are originated by a bank and the bank's name is on the paperwork. Under the federal Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA or DIDA), state-chartered banks are allowed to charge, across the country, any interest rate allowed in their home states. These lenders rely on obscure, out-of-state banks, mostly in Utah, which has no interest rate limits, to act as fronts for their high-cost loans. The bank's role is minimal, as the loan programs are designed and run by the nonbank lender, which generally bears nearly all the risk and earns nearly all the profits.

H-7941 would put an immediate end to these schemes by exercising Rhode Island's right under federal law to opt out of DIDA and to restore its ability to enforce its interest rate laws for loans to Rhode Island residents by out-of-state, state-chartered banks. While rent-a-bank schemes can also be challenged by applying anti-evasion doctrine to assess whether the bank is the true lender, true lender challenges require case-by-case enforcement actions and can have an uncertain outcome. Exercising the DIDA opt-out right creates a clear, simple rule.

The DIDA opt-out right applies to loans "made in the state." Some have incorrectly argued that loans are made in the state where the bank is located, not where the consumer is; thus a state's opt-out would prevent that state's banks from exporting their interest rates to other states, but would not give the state the right to impose its usury laws on loans made to consumers in the opt-out state by out-of-state banks. To the contrary, as the Senate Banking Chairman explained when Congress was considering DIDA: "Under the usury provisions, each State may reimpose its usury limits, if it so desires. We do not take that away from the States. They can put those usury laws back into effect."[1] DIDA overrides state usury laws in the consumer's state, not in the bank's state, and it is the consumer's state that can reimpose its usury limits. The FDIC agrees with this interpretation. In 2020, the FDIC stated that "if a State opts out of section 27, State banks making loans in that State could not charge interest at a rate exceeding the limit set by the State's laws, even if the law of the State where the State bank is located would permit a higher rate."[2] In other words, the state where the bank is located is a different state from the one where the loan is made for purposes of the opt out right.[3]

Banks understand how DIDA works, and banks enabling predatory lenders stay out of states that opt out of DIDA. Iowa, the only state that currently is opted out of DIDA, has none of the predatory lenders listed above. The Iowa Attorney General was able to force Transportation Alliance Bank, located in Utah, to stop making 188.9% APR puppy loans in Iowa and to reimburse Iowa consumers. Predatory lenders have also exited Colorado, which adopted legislation to opt out of DIDA effective this July.

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[1] Proceedings and Debates of the 96th Congress, H.R. 4986, 126 Cong. Rec. S 3235-46 (daily ed. Mar. 28, 1980) (statement of Senator William Proxmire, Chair of the Committee on Banking, Housing and Urban Affairs).
[2] 85 Fed. Reg. 44,146, 44,153 (July 22, 2020) (emphasis added).
[3] Some have confused Section 525 of DIDA with Section 521. Section 525 of DIDA (also referred to as Section 27 of the Federal Deposit Insurance Act) provides the right for state-chartered banks to export their interest rates, and it allows the interest rate of the state where "the bank is located." 12 U.S.C. § 1831d(a). Thus, interpretations of Section 525 have focused on where the bank's lending operations are located. *See* FDIC General Counsel's Opinion No. 11, 63 Fed. Reg. 27282-27286 (May 18, 1998). But Section 521 of DIDA has a different standard and different purpose than Section 525. When the consumer and the bank are located in different places (and the bank has come into the consumer's state by mail, the internet, or some other way), Section 521 deems a loan to be made in the consumer's state in order to effectuate the restoration of the state's usury laws.

H-7941 will preserve affordable credit for Rhode Island residents. Credit cards will still be available, as most credit cards are offered by national banks, which will not be affected by the bill, and Rhode Island does not cap the interest rates on open-end credit. Fintech lenders making installment loans can operate within Rhode Island's interest rate limits, and most of their loans already do.

Loans above the rates authorized in Rhode Island are likely to be unsustainable burdens, not affordable credit. Rhode Island allows its highest APR, 36%, to be charged only for the smallest loans—loans of $300 or less. Some fintech lenders charge rates approaching 36% for larger loans—loans of $10,000 or more. A 36% rate is an exorbitant and unaffordable rate for a loan of that size. Raising the rate on a $10,000, five-year loan from 21%, as currently allowed in Rhode Island, to 36% adds a whopping $5,448 in interest – more than half the loan itself. Many fintechs make even larger loans up to $30,000 or larger, for which high rates would be especially burdensome. Rhode Island has appropriately determined fair interest rates for the state's residents, and H-7941 will ensure that all nonbank lenders comply with the law.

H-7941 will give Rhode Island a powerful tool to kick predatory rent-a-bank lenders out of the state. The bill will not have any impact on Rhode Island banks. Rhode Island does not need 225% APR loans. I urge you to support H-7941 to ensure that Rhode Island's strong anti-predatory lending laws cannot be evaded by rent-a-bank schemes.

Thank you for considering this testimony. If you have any questions, please contact me at lsaunders@nclc.org.