Center for Responsible Lending

The Honorable Matt. D. Klein
Chair, Commerce and Consumer Protection Committee
Minnesota Senate
2105 Minnesota Senate Building
St. Paul, MN 55155

The Honorable Gary H. Dahms
Ranking Minority Leader, Commerce and Consumer Protection Committee
Minnesota House of Representatives
2219 Minnesota Senate Building
St. Paul, MN 55155

February 29, 2024

Dear Chair Klein, Ranking Minority Member Dahms, and Members of this Honorable Committee,

Thank you for the opportunity to submit this testimony in support of SF 3932.

My name is Yasmin Farahi, and I am Deputy State Policy Director and Senior Policy Counsel at the Center for Responsible Lending. The Center for Responsible Lending is a non-partisan research and advocacy organization that works to ensure a fair, inclusive financial marketplace that creates opportunities for all families and individuals, regardless of their income.

It is because of this commitment that I write in strong support of SF 3932, a bill that will stop evasions of Minnesota's strong consumer lending law by online lenders. I have worked closely with Minnesota advocates over many years to support their efforts to strengthen and protect Minnesota laws to ensure predatory lenders are not draining wealth from Minnesotan's communities.

Last year the Minnesota legislature enacted important legislation to ensure that Minnesotans are protected from predatory lending, passing a rate cap on consumer short-term loans that effectively stopped predatory payday lending in the state. SF 3932 would build upon this effort by ensuring that Minnesota's reasonable consumer laws are respected by all lenders, regardless of the lender's location.

Evasions of state law are accomplished by online lenders in "partnership" with a handful of out-of-state, state-chartered banks exploiting a federal law provision allowing state-chartered banks to “export” across the country the laws of the state where they charter. This gives unfair advantage to banks in states with weak consumer financial protection laws and disempowers lawmakers, Attorneys General, and voters.

Minnesota has been a leader in fighting evasions by out of state lenders, but litigation is time-consuming, expensive and, in the case of online rent-a-bank lenders, dependent upon persuading a court that the “partnership” is structured so that the fintech is the “true lender.” Given the growing number of parties to these evasions, one-by-one litigation over the financial structure of these schemes is not a viable approach—nor can it succeed against direct lending by an out-of-state bank.

The best way to stop these evasions is by exercising the state’s right under federal law to “opt out” of the Depository Institutions Deregulation and Monetary Control Act (DIDMCA), the law being exploited for this purpose. Minnesota banks comply with Minnesota law, and opting out would merely require out of state banks to comply with the same laws.

Minnesota’s laws for consumer loans are reasonable. MN law allows lenders to charge up to 21.75% on all loans, while allowing higher rates on smaller loans. For example, lenders can charge as much as 50% on loans of up to $1,300. For loans of $1,350 and larger, the maximum allowable rate starts at 33% and declines as loan sizes increase, down to a rate cap of 21.75% on the largest loans .Because of the DIDMCA loophole, there are two types of lenders evading state rate caps: lenders like Opportunity Finance (OppFi), Elevate, and Enova, that offer loans at interest rates approaching 200%, and others that make loans at 36%, but on larger amounts that are impermissible under Minnesota law. In opposing HB 3680, these lenders seek to continue to ignore the will of Minnesota’s legislature.

High-cost loans like the ones offered through rent-a-bank arrangements harm consumers. One prolific Minnesota rent-a-bank lender, OppFi offers loans ranging from $500 to $4,000 with 9- to 18-month terms, charging Annual Percentage Rates (APRs) up to 160%. OppFi reports that its average loan size is approximately $1,500 with an 11-month term. Its average effective interest rate on personal installment loans is 152%, showing that most consumers obtaining loans from OppFi pay nearly the highest rates offered. To repay a $1,500 11-month loan with a 152% APR, a borrower would pay $2,860 in total - $1,360 in interest in addition to repaying the original amount borrowed.

OppFi contends that it helps its customers build credit, and yet its loan portfolio’s performance indicates otherwise. Although OppFi doesn’t disclose its customers' delinquency rates or loan-level repayment outcomes, its astronomical charge-offs and high levels of default indicate that a sizable share of its customers are not successfully repaying their loans. In 2022, OppFi reported a 62% charge-off rate, and a 20% default rate on its outstanding principal balance. OppFi's interest rates are so high that even with net charge-offs of around 40%, OppFi still comes out ahead. But large swaths of OppFi's customer base do not.

While some out of state-lenders like OppFi seek to continue making relatively smaller dollar loans to Minnesotans at triple-digit interest rates far exceeding those allowed under the law, others seek the ability to make large loans—say $10,000 or $20,000—at rates of 30% or even 36% APR. Such rates on loans this size are untenable.

Consider, for example, a borrower who takes out a $10,000 loan at 36% interest. That borrower would pay back $21,679 over five years – in other words, they would pay more than $11,000 in interest. When lenders follow Minnesota's law, the rates are much more reasonable. A borrower who took out that same $10,000 at 21.5% would pay around $6,000 in interest.

Allowing online lenders to make larger loans at even higher rates will not help Minnesotans who are already struggling to make ends meet.

From a national perspective, in recent years, states have been recognizing the growing number of state bank-partnered online lenders violating their state's reasonable usury limits. By passing this important legislation, Minnesota will be part of a growing movement, starting with Attorneys General across the country fighting these evasions one by one and now in state legislatures. Last year, Colorado passed a law opting out of DIDMCA and the District of Columbia is currently considering an opt-out as well.

We strongly urge you to adopt SF 3932. Minnesota legislators have rightly balanced the need for access to credit with consumer protection and put in place strong laws to stop predators from targeting Minnesotans. Online lenders should have to play by the same rules as everyone else and respect the laws of the state.

Once again, thank you for the opportunity to provide these written comments and for your attention to this issue. Should you have additional questions, please contact me at 919-313-8537 or yasmin.farahi@responsiblelending.org.

Sincerely,

Yasmin Farahi
Deputy Director of State Policy and Senior Policy Counsel
Center for Responsible Lending
www.responsiblelending.org

Encl: *Stop High-Cost Lenders from Evading State Laws: An Overview of Rent-a-Bank Schemes & the Simple DIDMCA Opt-Out Solution*