



OREGON DEPARTMENT OF JUSTICE

TO: House Committee on Commerce and Consumer Protection

FROM: Leslie Wu, Policy Advisor to Attorney General Rayfield, Oregon Department of Justice

DATE: 1/28/2025

SUBJECT: Testimony in support of House Bill 2561

The Department of Justice supports HB 2561. This legislation is necessary to protect consumers from harmful online lending practices that aim to skirt Oregon's laws and ensures a level playing field for local lenders.

Predatory lending has long been tackled through state "usury" laws. Those laws are some of the oldest and most basic forms of consumer protection in our legal system, and they stem from the concept that exploiting and profiting off people with limited means is unfair and harmful to society. Oregon has set rate ceilings that allow lenders to operate without taking unfair advantage of consumers. Under Oregon law, the usury APR cap is 36%.

While businesses that operate in our state generally must follow our laws, some lenders have exploited a complicated loophole to make online loans at extremely high interest rates. Their schemes stem from a federal law passed in 1980 called the Depository Institutions Deregulation and Monetary Control Act (DIDMCA). Section 521 of DIDMCA allows federally insured banks located out of state to lend at either the home state's highest allowed rate, or at 1% over the Fed's discount rate, whichever is higher. When this law was passed, online lending did not yet exist.

In more recent years, Oregon and other states have seen an influx of predatory lending that takes advantage of section 521 when making loans online. The ease of internet marketing and electronic fund transfers, combined with certain states' increase or elimination of usury limits to attract lending businesses, has led to the creation of "rent-a-bank" schemes. These schemes involve an online operator who enters a contract with a bank to make loans using the bank's higher allowed interest rate. The online operator will often underwrite, service, market, and purchase the loan or its revenue stream, while the bank funds the loan and puts its name on the loan documents. This allows an online operator making loans to Oregonians to bypass our State's 36% APR cap by simply "renting" an out of state bank, sometimes with excessive interest rates.

These schemes have harmed Oregon consumers and Oregon lenders that comply with our state's usury laws. Consumers taking out these "rent-a-bank" loans often lack an understanding that the loan carries triple-digit interest rates higher than rates allowed under Oregon law. They are then forced to pay back amounts several times their original balance.

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January 27, 2025
Page 2

The solution is a DIDMCA opt-out. When Congress passed DIDMCA it created a way for states to avoid preemption of their usury rates. Section 525 of the law gives states the ability to “opt out” of the preemption provisions by stating via legislation that it “does not want [section 521] to apply with respect to loans made in such State.” By opting out of DIDMCA preemption, the legislature will take back the power to decide what usury ceilings should apply for different loans. This will allow the legislature to be responsive to the needs of consumers and businesses in the state. For example, the legislature could choose to increase or decrease rate caps for certain types of loans that carry higher rates than others if such a policy would serve consumers in Oregon. The control over that choice should lie with an elected and representative body, rather than online operators who exploit the DIDMCA loophole to have rates their way.

Our agency encourages your committee’s support for this bill. If you have any questions or want additional information, we are happy to assist.