

LEGAL UPDATES

PUBLISHED: FEBRUARY 19, 2024

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# Minnesota Proposes Opt-Out to Federal Interest Rate Preemption under DIDMCA

On February 13, 2024, the Minnesota legislature introduced H.F. 3680, a bill that proposes to opt out of federal interest rate preemption by federally insured state-chartered banks or credit unions making consumer loans in Minnesota pursuant to Section 525 of the federal Depository Institutions Deregulation and Monetary Control Act (DIDMCA). If passed as introduced, the bill would apply to consumer loans executed on or after August 1, 2024. Minnesota is the latest state to propose a DIDMCA opt-out to federal interest rate preemption and joins a concerning state legislative trend that could ultimately leave federally insured state banks and credit unions at a competitive disadvantage when operating loan programs regionally or nationwide.

In addition to opting out of federal preemption of Minnesota's rate and fee limitations on loans made in Minnesota by federally insured state banks and credit unions, H.F. 3680 contains two notably provisions:

The bill provides that a consumer loan is deemed to be "made in Minnesota" if the borrower is a Minnesota resident and the borrower completes the transaction, either personally or electronically, while physically located in Minnesota.

The bill permits an out-of-state bank or out-of-state credit union, as defined under Minnesota law, to charge "the rate allowed by the financial institution's home state" on open-end credit pursuant to a credit card.

H.F. 3680 proposes to amend Section 47.59, which defines "consumer loan" as a loan made by a financial institution and in which the debtor is a person other

than an organization; the debt is incurred primarily for a personal, family, or household purpose; and the debt is payable in installments or a finance charge is made. This definition of “consumer loan,” together with the credit card exception (above), informs the proposed scope of Minnesota’s DIDMCA opt-out. Other states have similarly limited their opt-out to consumer credit.

Minnesota’s proposal to opt out of federal interest rate preemption reveals a concerning potential state legislative trend. Last year, Colorado passed a law to opt out of federal interest rate preemption. The opt-out applies to certain consumer loans made or renewed on or after July 1, 2024. At the end of the 2023, the District of Columbia proposed a bill to opt out of federal interest rate preemption under Section 521 of DIDMCA. Iowa and Puerto Rico have existing opt-outs to federal interest rate preemption. When DIDMCA was first enacted in the 1980s, eight states decided to use Section 525 to opt out of federal interest rate preemption for loans made in their states. Many of those states subsequently revoked their opt-outs. While we are not back to the initial number of state opt-outs, the recent state legislative trend to propose opt-outs to federal interest rate preemption could place federally insured state banks and credit unions at a further competitive disadvantage relative to other depository institutions when it comes to operating national or regional loan programs.

### **Contact us**

We regularly advise banks, credit unions, and licensed lenders on permissible rates and fees for their credit products. If you have questions about permissible rates and fees or federal interest rate preemption, including Minnesota’s proposed opt-out, contact Susan Seaman, Marci Kawski, or your Husch Blackwell attorney.