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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

NATIONAL ASSOCIATION OF INDUSTRIAL BANKERS, ONLINE LENDERS ALLIANCE, and AMERICAN FINANCIAL SERVICES ASSOCIATION, Plaintiffs, v. SEAN O'DAY, in his official capacity as Director of Oregon Department of Consumer and Business Services, Defendant.	Case No.: 6-26-cv-01201-AA **BRIEF OF *AMICI CURIAE* CENTER FOR RESPONSIBLE LENDING AND NATIONAL CONSUMER LAW CENTER IN SUPPORT OF DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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INTEREST OF AMICI CURIAE[1]

Amici are nonprofit, non-partisan consumer advocacy organizations dedicated to protecting consumers from abusive lending practices and preserving states' longstanding authority to enact and enforce usury laws. *Amici* participated in the Oregon Legislature's consideration of House Bill 4116 by providing written and oral testimony regarding predatory lending by out-of-state banks and the relationship between the Depository Institutions Deregulation and Monetary Control Act of 1980 ("DIDMCA"), state usury authority, and high-cost lending. *Amici* submit this brief in support of Defendant to assist the Court in interpreting Section 525 of DIDMCA, which preserves Oregon's authority to enforce its interest-rate limits on loans made to Oregon borrowers regardless of where the bank is located.

The Center for Responsible Lending ("CRL") is a research and policy organization promoting financial fairness and economic opportunity for all. CRL is an affiliate of Self-Help, a nonprofit with retail credit union branches across the country.

The National Consumer Law Center ("NCLC") has advocated for economic justice for low-income and other disadvantaged people since 1969. NCLC has extensive expertise in consumer lending and state and federal credit regulation. Its publications include Consumer Credit Regulation (4th ed. 2025), which addresses federal preemption of state interest-rate laws and bank-enabled predatory lending.

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[1] No counsel for any party authored this brief in whole or in part, and no person other than *amici curiae*, its members, or its counsel has made a monetary contribution to this brief's preparation and submission. Fed. R. App. P. 29(a)(4)(E). Both parties consented to the filing of this brief, and this brief accompanies a motion for leave to file an amicus brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Usury laws are among the oldest and most fundamental forms of consumer protection. For centuries, states have used interest-rate limits to protect borrowers from loans that exploit financial distress rather than relieve it.

This case concerns Plaintiffs' effort to prevent Oregon from enforcing House Bill 4116, which applies Oregon's longstanding interest-rate protections to consumer finance loans made to Oregon borrowers.[2] Plaintiffs seek a preliminary injunction based on their claim that DIDMCA prevents Oregon from applying its interest-rate limits to loans made by out-of-state, state-chartered banks. That claim fails. Section 525 expressly preserves Oregon's authority to reassert its usury laws with respect to loans made to Oregon residents.

Section 521 of DIDMCA displaced state usury laws by allowing state-chartered banks to charge a federally defined rate or to export any rate permitted by the bank's home state into the borrower's state. But Section 525 expressly gave states the right to opt out of DIDMCA's preemptive effect. Plaintiffs contend that Section 525 permits only a partial opt-out—of the federal-rate option only, and only as to state-chartered banks with lending operations located within the state. Under that reading, Oregon and other states could prevent their own state banks from lending at the federal rate to residents of other states, but could not protect their residents from usurious loans by out-of-state banks that locate in states like Utah with no rate caps. One

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[2] House Bill 4116 amended ORS 725.015 to provide that Oregon "does not want any of the amendments set forth in section 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (P.L. 96-221, 94 Stat. 132) to apply to consumer finance loans made in this state[]" and specified when a person is subject to Oregon's consumer finance laws, including when a person makes such loans "to a consumer who resides in or maintains a domicile in this state[.]" Or. Laws 2026, ch. 113, § 1.

state's rate policy could thus override the rate ceilings of every other state, including those that opted out.

Section 525's plain language, structure, and history foreclose Plaintiffs' partial-opt-out reading. A loan is not made until the borrower receives the funds, and ordinary usage treats a bank as making a loan in the state where the borrower is located. Section 521 focuses on where a bank is "located," while Section 525, housed in the effective-date provision, addresses whether loans are "made in" the opt-out state and determines whether Section 521 applies at all. Congress likewise described the opt-out as restoring state usury laws, not merely turning off one part of Section 521.

Section 525 therefore restores an opt-out state's authority to apply its usury laws to loans made to its residents. Oregon exercised that authority through House Bill 4116. The Court should deny Plaintiffs' Motion for Preliminary Injunction.

ARGUMENT

I. The Historical Background of DIDMCA.

A. Usury Policy Has Been a Quintessential Domain of State Authority.

Policymakers have long recognized the unequal bargaining power between consumers and lenders. Interest-rate caps have long prevented lenders from exploiting consumers through high-cost loans that may provide temporary relief but deepen long-term distress. *Nichols v. Fearson*, 32 U.S. 103, 111 (1833) ("The acts against usury were intended to protect the needy[.]"). Predatory lending can become a set-up-to-fail model in which high rates allow lenders to profit even when borrowers ultimately are unable to repay their loans. Nat'l Consumer

Law Ctr., *Misaligned Incentives: Why High-Rate Installment Lenders Want Borrowers Who Will Default* (2016).[3]

American usury law "represents a venerable body of legal, ethical, religious, and (sometimes) economic thought, reaching back through the Middle Ages to the foundations of western civilization." James Ackerman, Note, *Interest Rates and The Law: A History of Usury,* 1981 Ariz. St. L.J. 61, 62-63 (1981). The thirteen American colonies imposed usury limits on loans by capping annual interest rates. By 1886, every state had some usury limit. *Id.* at 85.

As the Supreme Court has stated, "It is elementary that the subject of the maximum amount to be charged by persons or corporations subject to the jurisdiction of a state for the use of money loaned within the jurisdiction of the state is one within the police power of such state." *Griffith v. Connecticut*, 218 U.S. 563, 569 (1910). Federal courts likewise regard state usury prohibitions as strong or fundamental public policies. *See, e.g.*, *United States v. Moseley*, 980 F.3d 9, 21-22 (2d Cir. 2020); *Kaneff v. Delaware Title Loans, Inc.*, 587 F.3d 616, 623-24 (3d Cir. 2009); *Hengle v. Treppa*, 19 F.4th 324, 352 (4th Cir. 2021). The Ninth Circuit has recognized that states may apply their consumer-credit laws to transactions involving out-of-state lenders and in-state borrowers. *Consumer Fin. Prot. Bureau v. CashCall, Inc.*, 35 F.4th 734, 743-44 (9th Cir. 2022) (rejecting lender's efforts to evade state consumer-protection laws through an out-of-state lending arrangement and recognizing application of state law where borrowers resided). Other circuits have similarly held that states may apply their interest-rate and consumer-credit laws to loans made to their residents by out-of-state lenders. *See, e.g.*, *Quik Payday, Inc. v. Stork*, 549 F.3d 1302, 1307-08 (10th Cir. 2008) (upholding application of Kansas law to internet lender

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[3] https://www.nclc.org/resources/misaligned-incentives-why-high-rate-installment-lenders-want-borrowers-who-will-default/.

making loans to Kansas residents); *Aldens, Inc. v. Ryan*, 571 F.2d 1159, 1161-62 (10th Cir. 1978) (upholding application of Oklahoma interest-rate limits to Illinois mail-order retailer involved in credit transactions with Oklahoma residents).

In recent years, however, state usury authority has been undermined through partnerships between non-bank internet lenders and state-chartered banks located in states with no usury caps, resulting in loans at 100% to 200% APR. Nat'l Consumer Law Ctr., *High-Cost Rent-a-Bank Loan Watch List* (July 21, 2026) ("NCLC, Rent-a-Bank Watch List"). Iowa, for example, exercised its DIDMCA opt-out when the statute was enacted in 1980 and has remained opted out ever since. Br. of Amicus Curiae Ctr. Thomas J. Miller in Supp. of Defs.-Appellants and for Reversal at 4-7, *Nat'l Ass'n of Indus. Bankers v. Weiser*, No. 24-1293 (10th Cir. July 15, 2026). Iowa has enforced its usury laws against triple-digit loans made to Iowa residents by out-of-state state-chartered banks and their non-bank partners.[4] Oregon, like Iowa, has exercised its DIDMCA opt-out and interprets Section 525 to preserve its authority to apply its usury laws to loans made to its residents by out-of-state state-chartered banks. Def.'s PI Opp'n 17-21, ECF No. 35. Plaintiffs' interpretation, by contrast, would negate the authority that Oregon and Iowa expressly preserved through opting out and shield loans prohibited in as many as 45 states, depending on the size of the loan. Nat'l Consumer Law Ctr., *Fact Sheet: State Annual Percentage Rate (APR) Caps for $500, $2,000, and $10,000 Installment Loans* (Dec. 18, 2025).[5]

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[4] *See, e.g., In re Transp. Alliance Bank, Inc. d/b/a TAB Bank*, Assurance of Discontinuance (Iowa Att'y Gen. & Iowa Div. of Banking Dec. 12, 2022), https://www.iowaattorneygeneral.gov/media/cms/TAB_Bank__SOI_Assurance_of_Disconti_92D5556A9591B.pdf.

[5] https://www.nclc.org/resources/fact-sheet-state-annual-percentage-rate-apr-caps-for-500-2000-and-10000-installment-loans/.

B. Congress Extended Rate Preemption to State Banks While Preserving States' Ability to Reassert Usury Laws.

The National Bank Act ("NBA") allows national banks to charge the higher of a federally defined rate or the rate permitted in the state where the bank was located. 12 U.S.C. § 85.Before states began deregulating their rate limits in the mid-twentieth century, both NBA rate options operated as true usury caps. *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 9 (2003) ("[Section 85] sets forth substantive limits on the rates of interest that national banks may charge."). And before modern credit cards and, later, interstate bank branches that made consumer lending across state lines commonplace, the bank's home-state rate ordinarily corresponded to the borrower's state usury law because national banks generally lent to consumers within their home states.

That practical alignment began to change in the 1960s with "the ease with which interstate credit [became] available by mail through the use of modern credit cards." *Marquette Nat'l Bank of Minneapolis v. First of Omaha Serv. Corp.*, 439 U.S. 299, 318-19 (1978). In 1978, the Supreme Court held that a national bank could offer credit cards nationwide at its home-state rate. Responding to the concern that this would "significantly impair the ability of States to enact effective usury laws," the Court stated that "the protection of state usury laws is an issue of legislative policy, and any plea to alter § 85 to further that end is better addressed to the wisdom of Congress." *Id.*

While the NBA remained a usury statute, one effect of *Marquette* was the emergence of competitive pressure on states to loosen their usury laws to attract or retain national banks. Steven Mercatante, *The Deregulation of Usury Ceilings, Rise of Easy Credit, and Increasing Consumer Debt*, 53 S.D. L. Rev. 37, 41 (2008).

Within two years of *Marquette*, Congress enacted DIDMCA. To "prevent discrimination against State-chartered insured banks," Section 521 preempts state usury laws by giving state-chartered banks two interest-rate options: (1) the federal rate set forth in the NBA or (2) the "rate allowed by the laws of the State…where the bank is located," thereby allowing state banks to export their home-state rates as national banks could under *Marquette*. 12 U.S.C. § 1831d(a). Sections 522 and 523 do the same for insured savings and loan associations and credit unions.

However, unlike in the NBA, Congress expressly preserved in DIDMCA a mechanism that allows states to reassert their traditional usury authority. Section 525—the "effective-date" provision—provides that Sections 521 through 523 apply beginning April 1, 1980, but cease to apply with respect to loans made in a state once it adopts a law or certifies that its voters approved a provision stating that the state "does not want the amendments. . . to apply with respect to loans made in such State." 12 U.S.C. § 1831d note. Section 525 thus allows states, if they choose, to restore the application of their usury laws to consumer lending transactions, including loans made to residents of the opt-out state.

Plaintiffs contend that Section 525 permits a state to opt out of only one part of Section 521—the federal-rate option—and only for state-chartered banks located within the opt-out state. Under this reading, Oregon could restrict an Oregon state-chartered bank's reliance on the federal rate even with respect to loans made to residents of other states, but could not prevent an out-of-state, state-chartered bank from exporting into Oregon a rate it has deemed usurious. Plaintiffs offer no theory for why Congress would have enacted such a self-defeating policy.

II. Section 525's Ordinary Meaning and Structure Encompass Loans Made to Borrowers in the Opt-Out State.

Defendant explains why the plain language of Section 525, in contrast to Section 521, unambiguously applies to loans made in the opt-out state and forecloses Plaintiffs' bank-location-only interpretation. Pls.' PI Mem. 10-23, ECF No. 15. Three additional textual points reinforce Defendant's argument.

A. In Ordinary Usage, a Loan Is Not Made Until the Borrower Receives the Money Being Lent.

To determine where a loan is made, it is first necessary to define what constitutes a loan. As the dictionary definitions quoted by both parties establish, a loan is the "[d]elivery by one party to *and receipt by* another party" of money pursuant to an agreement to repay. Black's Law Dictionary 844 (5th ed. 1979) (emphasis added). Merriam-Webster similarly defines a loan as a "transfer or delivery of money from one party *to another*" subject to repayment. *Loan*, Merriam-Webster.com Dictionary (emphasis added).[6] These definitions make clear that a loan does not come into existence when or where a lender merely decides to extend or disburse credit. Rather, a loan exists only when a borrower receives money pursuant to an agreement to repay. This is consistent with the Restatement (Second) of Conflict of Laws, which identifies the place of contracting as the place where the last act necessary to give the contract binding effect occurred. *Cf. Restatement (Second) of Conflict of Laws* § 188 cmt. e (Am. L. Inst. 1971). Thus, the place of receipt is necessarily at least one place where a loan is made.

This understanding of the phrase "made in" becomes even more apparent from ordinary usage. If someone asked, "Does Bank of America make loans in Colorado?" most would understand the question to mean whether Bank of America lends to borrowers located in

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6 https://www.merriam-webster.com/dictionary/loan.

Colorado. Few would understand the question as asking whether Bank of America maintains its underwriting department or other loan-making functions in Colorado. And no ordinary speaker would understand the question as referring solely to the location of the bank's activities, while excluding all consideration of the borrower's location.

Plaintiffs' interpretation effectively reads the words "made in such State" out of Section 525. Congress did not provide that Sections 521 through 523 cease to apply only when a bank's lending operations are located in the opt-out state; it provided that those provisions cease to apply with respect to "loans made in" that state. The phrase "made in" does not ask who performs the act of lending. It asks where the loan transaction occurs.[7] Plaintiffs' attempt to substitute the question "who makes a loan?" for the statutory question "where is a loan made?" ignores the words Congress enacted.

The FDIC used the same ordinary distinction in a 2020 rule intended to clarify "the law that governs the interest rates State-chartered banks…may charge." *Federal Interest Rate Authority*, 85 Fed. Reg. 44,146 (July 22, 2020). In response to comments on the proposed rule, the FDIC stated that if a state opted out under Section 525, "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*." *Id.* at 44,153 (emphasis added).

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[7] Plaintiffs argue that the words "make" and "made" throughout the Federal Deposit Insurance Act and Title 12 of the United States Code refer to the lender's conduct because, in ordinary usage, a lender "makes" a loan. Pls.' PI Mem.15-16, ECF No. 15. That observation does not resolve the meaning of Section 525. Congress did not use the word "made" in isolation; it provided that Sections 521 through 523 cease to apply "with respect to *loans made in such State*." 12 U.S.C. § 1831d note (emphasis added). The statutes Plaintiffs identify generally describe a bank's authority to make loans or regulate lending activities; they do not address where a loan is "made in" a particular state. Plaintiffs therefore conflate two different questions: who makes a loan and where a loan is made.

B. Congress's Different Phrasing in Sections 521 and 525 Must Be Given Effect.

Plaintiffs' interpretation cannot be reconciled with Congress's decision to use different language in Sections 521 and 525. Section 521 authorizes a state-chartered bank to charge the rate permitted by the state "where the bank is located" or the federal rate applicable in the Federal Reserve district where the "bank is located." 12 U.S.C. § 1831d(a). Sections 522 and 523 similarly refer to where savings and loan associations and credit unions are "located." Section 525, by contrast, permits a state to opt out "with respect to loans made in such State." 12 U.S.C. § 1831d note. Congress's use of materially different terms in adjacent provisions must be given effect. *See Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 457-58 (2022).

Section 525's passive phrasing reinforces that distinction by focusing on whether loans are "made in" the opt-out state, not on who makes them or where the lender is located. Sections 521 and 525 should be read together, but each must perform the function Congress assigned it. *See Hibbs v. Winn*, 542 U.S. 88, 101 (2004) ("[C]ourts are to interpret the words of a statute in context."). Section 521 defines permissible rates by reference to a bank's location; Section 525 allows states to opt out of Section 521 for loans made in that state. Had Congress intended the opt-out to depend on a bank's location, it knew how to say so. Indeed, Congress repeatedly used that bank-location language in Sections 521 through 523 but omitted it from Section 525.

C. Section 525's Effective-Date Structure Makes Section 521 Inapplicable to Loans Made in the Opt-Out State.

Section 525 sets the effective date for Sections 521 through 523 as April 1, 1980. 12 U.S.C. § 1831d note. Before that date, those provisions did not apply; after that date, they did. Importantly, the same sentence that made those provisions applicable also provided that they would cease to apply when a state opted out "with respect to *loans made in such State*." *Id.*

(emphasis added). Stated another way, the opt-out appears in the very provision that determines when Sections 521 through 523 apply.

That structure is significant. Enacted on March 31, 1980, DIDMCA turned Section 521 on for loans made beginning the next day, allowing state-chartered banks to charge either the federal rate or the rate permitted by the bank's home state. But the same effective-date sentence also specified how Section 521 could be turned off: when a state enacted a law declaring that it did not want the provisions to preempt its laws. Section 525 performs a gatekeeping function, determining whether Section 521's two overrides of state usury law—the federal-rate option and home-state rate exportation—*apply at all*. Plaintiffs' reading, however, would turn off only the federal-rate option while leaving home-state rate exportation in effect, a limitation that appears nowhere in Section 525. *See United States v. Naftalin*, 441 U.S. 768, 773 (1979) (declining to read in limitations from one subsection of a statute into other subsections of the statute).

The 1970s pre-DIDMCA statutes, on which Plaintiffs rely, do not support their narrow reading. Plaintiffs argue that because those statutes addressed localized credit crises and used substantially the same opt-out language as Section 525, the opt-out provisions operated only locally by restricting banks located within the opt-out state from charging the federal rate. Pls.' PI Mem. 15-20, ECF No. 15. But the earlier statutes did not define loans "made in" a state by reference to the bank's location. Rather, they temporarily displaced state usury caps for limited classes of loans and provided two ways for that displacement to end: expiration on a date certain or enactment of a state opt-out. The opt-out had the same effect as expiration because either event ended the federal override in full and reinstated the state usury caps it had displaced. DIDMCA broadened preemption by expanding the types of loans covered and authorizing home-state rate exportation. By incorporating the same opt-out language and effective-date structure, Section 525 likewise permits a state to terminate that broader preemption and reassert its traditional usury authority over loans made in the opt-out state. The earlier statutes thus confirm that the scope of an opt-out corresponds to the scope of the federal override it terminates.[8]

III. Section 525's Legislative History Confirms Congress Preserved State Opt-Out Authority.

The text and structure of Sections 521 and 525 resolve this case. Even if the Court looks beyond the text, the legislative history compels the same conclusion.

Section 521's roots date to a November 1979 bill to address the competitive disadvantage that state-chartered institutions faced after *Marquette*, while allowing states to preserve their usury laws through overriding legislation. S. 1988, 96th Cong. (1979)[9]; 125 Cong. Rec. 30,655 (1979).[10] Senator Proxmire, Chairman of the Senate Banking Committee, recognized that the proposal would "override all State laws as far as State banks are concerned." 125 Cong. Rec. 30,655 (1979). He cautioned that Congress should be "very chary about overriding State usury laws." *Id.* Senator Bumpers acknowledged that it was not "particularly healthy, to be overriding State law." *Id.*

During a hearing on S. 1988, Federal Reserve Vice Chairman Frederick Schultz explained that the opt-out "would honor State prerogatives by enabling legislatures to reject the rate flexibility *provisions* of this bill"—all provisions, not only some of them—"through passage of a new State law reaffirming existing regulations." *Usury Lending Limits: Hearing on S. 1988*

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[8] Carried to its logical conclusion, Plaintiffs' reasoning would limit Section 525's opt-out to the federal-rate override for business or agricultural loans of $25,000 or more—the scope of the predecessor statutes' preemption. Plaintiffs do not take their argument that far.

[9] https://www.congress.gov/bill/96th-congress/senate-bill/1988.

[10] https://www.govinfo.gov/content/pkg/GPO-CRECB-1979-pt23/pdf/GPO-CRECB-1979-pt23-6-2.pdf.

Before the S. Comm. on Banking, Hous. & Urb. Affs., 96th Cong. 35 (1979) (emphasis added).[11] "In the view of the majority of the Board . . . this approach would provide adequate preservation of State authority to regulate lending practices." *Id.* Schultz emphasized that, out of concern for "States' rights" and federalism, the bill would "say that these usury laws will be preempted but you can reinstate them, you can override, if you wish to do so." *Id.* at 48. Senator Proxmire agreed: "[W]e provide this override until *such* State legislatures adopt laws stating in substance that *such State* does not want such amendment or amendments made to the statute with respect to this." *Id.* at 48-49 (emphasis added).

Although the Bumpers-Pryor bill did not reach the Senate floor, the Conference Committee incorporated its provisions into H.R. 4986, which Congress ultimately enacted as DIDMCA. The Senate Conference Report confirms the previously expressed understanding of Section 525, stating "[s]tate usury ceilings on all loans made by Federally insured depository institutions (except national banks) . . . will be permanently preempted subject to the right of affected states to override at any time[.]" S. Conf. Rep. No. 96-640, at 78-79 (1980).[12] The Report further explained that a state could "override a federal preemption of state usury laws provided for in this title" by expressly indicating its intent to do so. *Id.* at 79.

The House and Senate debates on the Conference Report reflected the same understanding. Representative Reuss, the Chair of the House Banking, Finance, and Urban Affairs Committee and floor manager for H.R. 4986, explained that the bill would preempt state usury ceilings while simultaneously "protect[ing] States' rights by allowing States to restore the

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11 https://www.govinfo.gov/content/pkg/CHRG-96shrg56265O/pdf/CHRG-96shrg56265O.pdf.

12 https://fraser.stlouisfed.org/title/depository-institutions-deregulation-monetary-control-act-1980-6067.

usury ceiling promptly if they wish to do so." 126 Cong. Rec. 6,965 (1980).[13] Senator Proxmire explained, "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." 126 Cong. Rec. 7,070-71 (1980).[14]

That legislative history focuses on preserving states' ability to *fully* restore their usury laws, including the interstate lending permitted by *Marquette*, not merely their ability to regulate banks chartered within their borders. Congress's repeated references to restoring state usury laws encompass both Section 521's federal-rate option and rate exportation, and nothing in the record supports the partial opt-out Plaintiffs propose.

IV. Oregon Exercised the Authority Congress Expressly Preserved in Section 525.

Oregon enacted House Bill 4116 out of concern about the impact of high-cost lending by out-of-state banks made to Oregon residents. Contrary to Plaintiffs' assertions that the law is overbroad, Section 1(3) of House Bill 4116 is carefully limited to loans made to consumers who reside in or maintain a domicile in Oregon *and* who either enter into the loan while physically present in Oregon or make a payment through an Oregon financial institution or negotiable instrument. Or. Laws 2026, ch. 113, § 1(3).

Oregon acted to protect its residents following a well-documented problem with usurious lending. Oregon has imposed a 36% APR cap on consumer finance loans since 2007, yet the Oregon Division of Financial Regulation ("DFR") reported that since 2020, more than 31,000 consumer finance loans totaling at least $61 million have been made to Oregon borrowers at

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[13] https://www.govinfo.gov/content/pkg/GPO-CRECB-1980-pt6/pdf/GPO-CRECB-1980-pt6-1-2.pdf.

[14] https://www.govinfo.gov/content/pkg/GPO-CRECB-1980-pt6/pdf/GPO-CRECB-1980-pt6-2.pdf.

rates exceeding that cap. Or. Div. of Fin. Regul., *HB 4116*, at 4 (Feb. 23, 2025);[15] *see* Nat'l Consumer L. Ctr., *Why Cap Interest Rates at 36%* (2021) (explaining that a 36% APR cap is a widely accepted maximum rate for small-dollar loans).[16] DFR attributed those loans to partnerships between non-bank lenders and out-of-state state-chartered banks that relied on DIDMCA's rate-exportation provision to charge Oregon borrowers rates exceeding 100% APR. Or. Div. of Fin. Regul., *HB 4116*, at 4-5. By contrast, DFR reported that Oregon-chartered banks and credit unions comply with Oregon's interest-rate limits and that Oregon maintains a robust consumer lending market with approximately 185 licensed consumer finance lenders. *Id.* at 4, 8; Or. Dep't of Consumer & Bus. Servs., Div. of Fin. Regul., *HB 4116 Outstanding Questions*, at 5-6 (Feb. 2026).[17]

Oregon's experience also illustrates the lending practices that prompted the Legislature to exercise its Section 525 opt-out authority. Before passage of House Bill 4116, several high-cost lenders making loans at 100% to 225% APR through out-of-state banks operated in Oregon. *See* NCLC, Rent-a-Bank Watch List (as of Sept. 26, 2024).[18] One of those was Wheels Financial Group, which makes auto title loans up to 170% APR under the LoanMart and ChoiceCash brands. *Id.* Auto title loans are a particularly predatory form of loan secured by the title to the consumer's car, putting it at risk of repossession. *See* Consumer Fin. Prot. Bureau, Press Release, *CFPB Finds One-in-Five Auto Title Loan Borrowers Have Vehicle Seized for Failing to Repay*

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[15] https://olis.oregonlegislature.gov/liz/2026R1/Downloads/PublicTestimonyDocument/252048; https://www.nclc.org/wp-content/uploads/2022/09/IB_Why_36.pdf.

[16] https://www.nclc.org/wp-content/uploads/2022/09/IB_Why_36.pdf.

[17] https://olis.oregonlegislature.gov/liz/2026R1/Downloads/CommitteeMeetingDocument/315350.

[18] https://www.nclc.org/resources/high-cost-rent-a-bank-loan-watch-list/.

Debt (May 18, 2016),[19] Peter Smith, Ctr. for Responsible Lending, *Under the Radar: Evidence of Prohibited Vehicle-Title Loans Made in 22 States and D.C.* (Feb. 2025).[20]

In 2026, the DFR issued a cease-and-desist and final order against Wheels Financial Group arising from at least 806 consumer finance loans made to Oregon consumers through a Utah-chartered bank. *In re Wheels Fin. Grp., LLC dba LoanMart dba 1-800LoanMart dba 800LoanMart & WFG Purchaser, LLC*, Case No. CF-22-0040, Order to Cease and Desist, Final Order Assessing Civil Penalty, and Consent to Entry of Order (Or. Dep't of Consumer & Bus. Servs., Div. of Fin. Regul. 2026).[21] The loans carried interest rates exceeding Oregon's 36% APR cap, and DFR estimated that the respondents collected approximately $1.4 million in interest in above Oregon's statutory limits. *Id.* ¶ 14. DFR found that Wheels acted as an "agent, broker or facilitator" for the bank and collected finance charges exceeding Oregon's statutory limits. *Id.* ¶ 17. The final order required the respondents to provide $900,000 in pro-rata refunds to Oregon borrowers and cease collecting charges exceeding Oregon's statutory limits. *Id.* ¶ 36(C).

The *Wheels* case thus illustrates how non-bank internet lenders can use relationships with out-of-state, state-chartered banks to make loans to Oregon consumers at rates prohibited by Oregon law. House Bill 4116 addresses that lending practice by restoring Oregon's interest-rate protections to covered loans. Oregon therefore exercised the very state authority that Section 525 expressly preserves.

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[19] https://www.consumerfinance.gov/archive/newsroom/cfpb-finds-one-five-auto-title-loan-borrowers-have-vehicle-seized-failing-repay-debt/.

[20] https://www.responsiblelending.org/media/new-research-brief-provides-fresh-evidence-car-title-lenders-operating-illegally-22-states.

[21] https://dfr.oregon.gov/AdminOrders/Wheels%20and%20WFG%20Final%20Order%20-%20SIGG%20(002).pdf.

CONCLUSION

Section 525 restores an opt-out state's authority to apply its usury laws to loans made to its residents, regardless of where the bank is located. Oregon exercised that authority through House Bill 4116, consistent with the text, structure, and history of DIDMCA. Plaintiffs' interpretation would leave an opt-out state unable to enforce its own usury laws against loans made to its residents by out-of-state state-chartered banks, contrary to the authority Congress expressly preserved. The Court should therefore deny Plaintiffs' Motion for Preliminary Injunction.

DATED this 25th day of August, 2026.

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