

Minnesota, Nevada, and Rhode Island Propose DIDMCA Opt-Outs

April 01, 2024

Minnesota, Nevada, and Rhode Island are the most recent additions to the list of jurisdictions that have proposed legislation to opt out of the Depository Institutions Deregulation and Monetary Control Act (DIDMCA). Sections 521–523 of DIDMCA empower states by allowing FDIC- or NCUA-insured, state-chartered banks and credit unions to contract for the interest rate permitted by the state where the bank is located and export that interest rate into other states pursuant to its home state’s interest-rate authority. Conversely, section 525 of DIDMCA permits states to opt out of sections 521–523 via legislation. Opting out would then require application of the state law where the loan is “made.”

On February 12, 2024, Rhode Island introduced [SB 2275](#), which proposes a DIDMCA opt-out of sections 521–523 and would seek to require state-chartered banks to comply with Rhode Island’s usury limitations. On March 5, 2024, Rhode Island introduced [HB 7941](#), which mirrors SB 2275. If signed into law, the proposed effective date is October 1, 2024.

Similarly, on February 28, 2024, Minnesota introduced [HF 3680](#), which proposes an opt-out of sections 521–523 and would also seek to require out-of-state banks and credit unions to comply with Minnesota’s usury limitations applicable to consumer loans to Minnesota residents, whether physically located in the state or if the transaction is conducted electronically. The proposed effective date of the legislation is August 1, 2024.

In Nevada, a nonprofit corporation proposed a [ballot initiative](#) that seeks to opt Nevada out of sections 521–523 and impose an all-in rate cap of 36 percent subject to the Military Lending Act annual percentage rate calculation. However, the rate cap excludes certain credit card fees for cards that are “network-branded and the fees collectively each year do not exceed 15% of the credit line.” The ballot initiative also seeks to apply the DIDMCA opt-out to payday loans and “loans,” which are defined to include, among others, installment loans, lines of credit, and retail installment sales contracts, that are made, brokered, and purchased by a Nevada resident, whether in the state or electronically. Licensed earned wage access services providers will be exempt.

Minnesota, Nevada, and Rhode Island [join the District of Columbia](#) in proposing an opt-out. Colorado will join Iowa and Puerto Rico when its opt-out legislation becomes effective on July 1, 2024.

While intended to curb evasion of state consumer lending and consumer protection laws, the effectiveness of a DIDMCA opt-out remains unclear. This is because federal law controls where a loan is “made” for opt-out purposes, and interpretations of the federal banking agencies suggest that where a loan is “made” is often not the borrower’s location.

Given that there have been three jurisdictions exploring a DIDMCA opt-out since January 2024, we would expect this trend to continue. Financial services companies should remain aware of the changing landscape as products, services, and programs are developed and maintained.

Reprinted with permission from the *American Bar Association's Business Law Today* [March Month-In-Brief: Business & Regulated Industries](#).

Related people

Rachael L. Aspery

Robert W. Savoie