

HB254 Letter of Support.pdf

Uploaded by: Amy Hennen

Position: FAV

January 23, 2024

House Economic Matters Committee

Chair: Delegate Wilson
House Bill 254 – True Lender Act

Re: Letter of Support

As Maryland’s Consumer Financial Protection Agency, the Office of Financial Regulation (OFR) requests a favorable report on HB254 which confirms consumer protections for Marylanders.

Under long-standing Federal law, Maryland’s laws limiting interest rates do not apply to national banks and banks chartered by other states. Consequently, these banks may extend loans to Maryland consumers at interest rates permissible under the laws of their “home” states that can significantly exceed the Maryland interest rate cap. Thirty-five states have higher interest rate caps (or no cap) than Maryland permits on a small dollar loan. Because of the supremacy of federal law, Maryland cannot pass legislation preventing these banks from charging Maryland borrowers interest at rates allowed by their home states. The practice of charging the highest interest rate available in a state where a lender is located on credit it extends to borrowers residing in other states has been known as “interest rate exportation.”

Historically, national and out-of-state banks started interest rate exportation in volume through credit card lending, and over time, as technology has improved and consumer lending expanded nationally, they expanded exportation of interest rates to all types of lending products. However, while national and out-of-state banks have long exported their higher interest rate products into Maryland, they have typically not been the entities that are engaging in predatory lending practices.

High interest products, however, started becoming a problem both locally and nationally between ten and fifteen years ago when payday and other nonbank lenders such as financial technology companies (FinTechs) started partnering with banks located in states authorizing high interest rates to effectively use the bank’s interest rate exportation right to avoid licensing requirements and offer high-cost loans in other states. This arrangement is commonly known as “rent-a-charter.” The combination of the interest rate exportation laws and willingness of certain banks in states with high interest rate caps to partner with FinTechs and other lenders (e.g., payday) has led to predatory and abusive practices that have hurt Maryland consumers.

So-called True Lender laws are named for the analysis used by courts to determine the party that is, as the name implies, the “true lender” to the consumer in a rent-a-charter arrangement. If the bank is determined to be the true lender, then the interest rate exportation is deemed legal and the high interest not violative of the consumer’s home usury limits. However, if the FinTech or other partner is deemed to

be the true lender, then the exportation of the interest rate is not permitted under federal law and the high-interest rate lender's loan is deemed to violate the usury laws of the consumer's state of residence. Hence, true lender laws confirm that FinTechs and other potential bank partners cannot avoid state interest rate caps by partnering with a bank located in a state allowing high consumer interest rates.

The rent-a-charter arrangement has been controversial, and both state and federal financial regulators have made various attempts to address the situation in the context of payday lending. OFR has also taken action. Currently, OFR is pursuing an enforcement action against an out-of-state bank and its FinTech partner for their high-cost lending activities in Maryland. Unfortunately, litigation is historically a slow process. A similar case in Colorado took over 3 years to resolve.

HB254 seeks to confirm the scope of Maryland's consumer lending rules by adding language to the code that explicitly prohibits lenders from engaging in subterfuges (e.g., making a loan purporting to be a sale/leaseback or providing a cash rebate) to evade Maryland's lending laws and otherwise it follows the example of other states like Maine and New Mexico and provides rules for determining when a FinTech is the true lender in a transaction and must adhere to Maryland's licensing laws, interest rate caps, and other consumer protections. OFR further believes that a statutory solution will align Maryland with the increasing number of states who are addressing the problem of high interest rate exportation, will reduce the number of predatory lenders marketing their products to Marylanders and, overall, is the best way to address this issue.

With that, we urge a favorable Committee Report.

HB 254 - Commercial Law - Credit Regulation - Pred

Uploaded by: Donna Edwards

Position: FAV



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Donna S. Edwards

Secretary-Treasurer

Gerald W. Jackson

**HB 254 - Commercial Law - Credit Regulation - Predatory Loan Prevention (True Lender Act)
House Economic Matters Committee
January 18, 2024**

SUPPORT

**Donna S. Edwards
President
Maryland State and DC AFL-CIO**

Chairman and members of the Committee, thank you for the opportunity to provide testimony in support of HB 254. My name is Donna S. Edwards, and I am the President of the Maryland State and DC AFL-CIO. On behalf of the 300,000 union members in the state of Maryland, I offer the following comments.

We recognize that sometimes a worker may need an advance on their pay in order to make ends meet and balance the household budget. When that is needed, they deserve strong consumer protections that protect them from bad actors and promote transparent financial decisions. HB 254 ensures that workers are protected from lenders who are not who they say they are offering illegally high interest rates on lending products.

The rise of new financial technology platforms and “rent-a-bank” schemes threatens to allow predatory lending practices while dodging our existing consumer protections. Federal laws allow banks to offer their interest rates on loan products nationwide. Enterprising financial startups discovered this loophole would allow them to subvert state level anti-usury or payday lending laws by partnering with willing banks, hence “Rent-a-Bank” schemes. These schemes allow loan products that function almost identically to payday loans to charge in excess of 189% APR.¹

The True Lender Act applies the “true lender doctrine.” This requires applying the consumer lending laws to lenders based on the “totality of the circumstances,” including examining whether they hold an economic interest in the loan, whether they marketed or sold the loan, purchased the loan, among other factors. By taking this more comprehensive approach to defining the lenders, these rent-a-bank schemes would now be subject to our state’s protections.

We urge a favorable report on HB 254.

¹ Annie Millerbernd. “What Are ‘Rent-a-Bank’ Loans and How Do They Work?” Nerdwallet. October 10, 2023.

MD 254 testimony rent-a-bank bill NCLC testimony.p

Uploaded by: Lauren Saunders

Position: FAV

Testimony in Support of Maryland HB 254: Predatory Loan Prevention (True Lender Act)
House Economic Matters Committee
By Lauren Saunders, Associate Director, National Consumer Law Center
January 23, 2024

Chairman Wilson and Members of the Committee,

Thank you for the opportunity to submit this testimony. I am Lauren Saunders, Associate Director of the National Consumer Law Center, a national non-profit organization that uses its consumer law expertise to work for economic justice for low-income and vulnerable consumers.

I am pleased to support HB 254, which codifies the widely-accepted “true lender” doctrine and stops predatory lenders that charge 200% APR or more from using exemptions designed for banks to evade Maryland’s interest rate limits and consumer protection laws.

Rent-a-bank schemes across the country and in Maryland

In a rent-a-bank scheme, a high-cost, nonbank lender launders its loan through an obscure bank, mostly in Utah, and claims that it is a “bank loan” exempt from interest rate laws in states like Maryland. Rent-a-bank schemes started with payday lenders, and more recently have been used by on-line installment lenders, including:

- Opportunity Financial, dba OppFi or OppLoans, which makes installment loans at rates up to 160% APR.
- Elevate Credit, which makes Rise installment loans at 99% to 149% APR and markets Elastic lines of credit with effective APRs of about 100%.
- Enova, which makes NetCredit-branded installment loans up to 99.99% APR.
- EasyPay Finance, which makes loans up to 188.99% APR through brick-and-mortar businesses that sell auto repairs, furniture, home appliances, pets, wheels, and tires.
- American First Finance, which makes similar loans through stores at rates up to about 161% APR.

Loans at these rates are debt traps, with payments that go primarily to interest, high refinancing rates that extend the debt even longer, and high default rates. These loans are all illegal in Maryland, which limits the APR on a \$500 loan to 33% and a \$2,000 loan to 30%.

Most rent-a-bank lenders stay out of Maryland, which has a history of enforcing its laws against evasions. But in recent years, Elevate and EasyPay Finance have offered loans in Maryland, and American First Finance appears to be doing so today, as Maryland stores appear in its website store locator.¹

¹ See <https://americanfirstfinance.com/shop/>.

The true lender doctrine

The true lender doctrine applies longstanding anti-evasion law to look behind the bank's name on a loan to discover whether the true lender is a nonbank lender subject to state law.

In rent-a-bank schemes, the predatory lender typically designs the loan program, sets rates, trademarks the loan program, creates and owns the underwriting criteria, markets the loans, collects and processes applications, approves the loans, services and collects the loans, and reaps the vast majority of the revenues, up to 96%. The bank is named on the loan documents, rubber stamps the underwriting criteria, and "originates" the loan by sending the money to the consumer. But the bank is then quickly paid back by the nonbank lender, or sells the vast majority of the loan revenues to the nonbank lender.

The true lender doctrine often focuses on which party has the "predominant economic interest" in the loan, but that is not the sole factor. Anti-evasion efforts require looking at the totality of the circumstances because usury evasions are infinitely varied.

Wide acceptance of the true lender doctrine

Courts have used anti-evasion principles to look behind the purported form of transactions to their substance for over two hundred years, in hundreds of cases in at least 49 states, including Maryland.

In the modern context, the true lender doctrine has been recognized in a variety of situations by at least 33 court decisions. The FDIC has acknowledged the true lender doctrine, and in 2020 Congress, on a bipartisan basis, used the Congressional Review Act to repeal a regulation by the Office of the Comptroller of the Currency that would have overturned the true lender doctrine.

Many states have codified the true lender doctrine. Most recently, since 2021, Illinois, Maine, New Mexico, Connecticut and Minnesota did so.

HB 254 stops 200% APR rent-a-bank evasions

Maryland has among the strongest anti-predatory lending laws in the country, with clear interest rate limits that prohibit payday loans and other forms of high-cost lending. But those laws are at risk of evasion, and rent-a-bank lenders have operated in Maryland.

HB 254 prevents predatory lenders from disguising their loans so they can charge rates that are illegal in Maryland. True lender statutes have been effective in other states, as high-cost lenders have left states after true lender bills have been adopted.

Maryland does not need 200% APR loans. The legislature has adopted strong anti-predatory lending laws, and HB 254 will ensure that those laws cannot be evaded by rent-a-bank schemes.

I urge you to support HB 254 and am happy to answer any questions.

HB254 Rent A Bank EconAction_FAV (2024).pdf

Uploaded by: Marceline White

Position: FAV



**Testimony to the House Economic Matters Committee HB254: Commercial Law-Credit
Regulation-Predatory Loan Prevention
(True Lender Act)
Position: Favorable**

January 23, 2023

The Honorable C.T. Wilson, Chair
House Economic Matters Committee
Room 231, House Office Building
Annapolis, Maryland 21401
cc: Members, House Economic Matters

Honorable Chair Wilson and members of the committee:

Economic Action Maryland (formerly the Maryland Consumer Rights Coalition) is a statewide coalition of individuals and organizations that advances economic rights and equity for Maryland families through research, education, direct service, and advocacy. Our 12,500 supporters include consumer advocates, practitioners, and low-income and working families throughout Maryland.

We are writing today in strong support of HB254.

The Maryland General Assembly and this committee have consistently rejected high-cost, predatory consumer loans. In 2017, Maryland once again closed a loophole that would have left the door ajar for payday loans from out-of-state lenders. For more than four decades, Maryland has remained steadfast in its commitment to affordable, sustainable loans for its residents and consistently kept rate caps below 36% for small consumer loans.

Over that time period, a number of products have tried to skirt these affordable interest rate caps through a variety of products. Rent-a-bank schemes are one such product. Rent-a-bank schemes allow banks to charge, anywhere in the country, the interest rates allowed in their home states.

High-cost lenders will use these banks as a front to evade the reasonable rate caps set by Maryland and other states. Using this model, in recent years Elevate, Easy Pay, and American Finance have offered loans in Maryland with usurious rates ranging from 99%-189% via FinWise Bank and TAB bank.

HB254 builds on Maryland legislative history including legislative action in 2001, 2010, 2017 to close loopholes that bad actors have exploited. HB254 codifies the true lender doctrine, clarifies Maryland law and strengthens protections for hard working Maryland residents from high-cost loans.

For these reasons we support HB254 and urge a favorable report.

Best,

Marceline White
Executive Director

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Uploaded by: Tonaeya Moore

Position: FAV



HB 254 - Commercial Law - Credit Regulation - Predatory Loan Prevention (True Lender Act)
Economic Matters Committee
January 23, 2024
SUPPORT

Chairman Wilson, Vice-Chair Crosby, and members of the committee, thank you for the opportunity to submit testimony in support of House Bill 254. This bill will establish more protections for consumers related to loans. HB 254 institutes broader definitions of a lender and the law they must abide by to offer lines of credit to consumers.

The CASH Campaign of Maryland promotes economic advancement for low-to-moderate income individuals and families in Baltimore and across Maryland. CASH accomplishes its mission through operating a portfolio of direct service programs, building organizational and field capacity, and leading policy and advocacy initiatives to strengthen family economic stability. CASH and its partners across the state achieve this by providing free tax preparation services through the IRS program 'VITA', offering free financial education and coaching, and engaging in policy research and advocacy. **Almost 4,000 of CASH's tax preparation clients earn less than \$10,000 annually. More than half earn less than \$20,000.**

Maryland is a state that has some of the country's strongest consumer protection laws. Maryland's usury rate cap of 28-33 percent for small loans has effectively stopped payday lenders from opening stores in the state. These laws protect Marylanders from extreme interest rates that target and trap low-income customers in a cycle of debt. Alternative financial services providers are using a popular method to bypass the state's consumer protection laws. A rent-a-bank scheme is when a company uses a traditional bank in their loaning process so technically the loan will be considered a bank loan. A loan from a bank is exempt from the protection put in place for payday loan providers and other alternative financial services providers. When borrowers are unable to make ends meet a payment or are unable to make a payment, they are often forced to open a new loan or refinance an existing loan, allowing debt to mount ever higher.

HB 254 will ensure that predatory lenders cannot bypass Maryland. It will recognize which entity the loan is actually being processed through. Currently, a non-bank lender can create, process, market, and receive the revenue for their loan programs without being considered a non-bank lender. Once the traditional bank originates the loan, they quickly sell it to the non-bank lender, so they have the right to collect payments.

The alternative financial service industries have proven adept at exploiting loopholes and continuing to use deceptive and abusive lending practices. HB 254 will ensure that their predatory practices are not allowed in Maryland.

Thus, we encourage you to return a favorable report for HB 254.

Creating Assets, Savings and Hope

Maryland Testimony HB 254 1.18.2024.pdf

Uploaded by: Whitney Barkley- Denney

Position: FAV

Testimony in Support of Maryland HB 254: Predatory Loan Prevention (True Lender Act)

House Economic Matters Committee

January 23, 2024

I am currently unemployed and experiencing XXXX hardship. I have a loan through Netcredit in the amount of {\$1300.00}. I originally took out this loan in 2020 and have made of {\$4000.00} in payments. I contacted Netcredit via email and phone in XXXX and XXXX to discuss my account details. After speaking with XXXX different people, including to a XXXX, they were unable to tell me the total amount of payments Ive made towards my outstanding balance. I know that I have paid well over the amount of the original balance. I would like for the remaining balance to be waived and my account to be closed permanently.

- *Maryland borrower, complaint about a loan via Enova to the Consumer Financial Protection Bureau¹*

Chair Wilson and Members of The Committee,

My name is Whitney Barkley-Denney, and I am the Deputy Director for State Campaigns for the Center for Responsible Lending. The Center for Responsible Lending (CRL) is a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation’s largest community development financial institutions. For thirty years, Self Help has focused on creating asset-building opportunities for low-income, rural, women-headed families, and families of color, primarily through financing safe, affordable home loans and small business loans.

Rent-A-Bank Lending in Maryland

I am submitting this testimony in support of HB 254, the True Lender Act. This bill would address the practice out-of-state banks partnering with non-bank lenders to offer Marylanders loans that far exceed the state’s statutory interest rates. This practice, euphemistically known as “bank partnerships”, is more aptly called “Rent A Bank”. Rent-A-Bank arrangements exploit a federal law that allows banks to export the legal interest rates of their home state into states with interest rate limits. As a result, a handful of state -chartered banks in Kentucky, Utah, and Delaware have partnered with non-bank lenders in order to make loans to consumers in states where they would otherwise be banned.

Despite Maryland’s 30% APR cap on loans up to \$2,000, several Rent-A-Bank lenders have been active in the Chesapeake Bay State.² These lenders include Enova, which trapped the borrower quoted above in a loan they repaid three times over with no relief, as well as Easy Pay and American First Finance. While Enova, which offers loans of up to 188%, and Elevate, whose products have APRs of 100% or more, are no longer lending in the state, American First Finance

¹ CFPB Complaints Database #6585753

² National Consumer Law Center, “High-Cost Rent-A-Bank Watch List”, (2022)

is active.³ American First traps borrowers through brick-and-mortar locations across Maryland, where they offer loans for car repairs, appliance, furniture, mattresses, and even pets at rates more than five times those allowable under Maryland law.⁴

In September of 2022, one of American First Finance's Maryland borrowers made the following complaint to the Consumer Financial Protection Bureau:

I purchased a refrigerator from XXXX XXXX on XX/XX/2022 and was offered what I thought was a line of credit or payment plan for the total close to {\$1500.00}. I set everything up to make reasonable, semi-monthly payments. On XX/XX/2022 I received a transaction receipt that showed my remaining balance to be over {\$4000.00}! When I logged into my American First account it showed NO copy of the original agreement. I have tirelessly combed through my emails as well. Upon further investigation, it seems this is a COMMON predatory lending practice with this company. I am disgusted. I attempted emailing, calling and using the chat now feature on the website on XX/XX/2022. Moments later the website showed a message that it was down for scheduled maintenance.⁵

The complaint from the Enova borrower and the one from this borrower are remarkably similar. Both borrowers were attempting to be responsible with their loans, checking their balances for payment and pay off amounts. Both were on the hook for paying back three times what they borrowed. And both were offered these loans despite living in a state where the rates they are paying are blatantly illegal.

Under Maryland law, these borrowers should have paid back their loans with around \$500 in interest. Instead, they are repaying many times that.

True Lender Pulls Back the Curtain on Evasions

In Rent-A-Bank arrangements, the non-bank lenders are the true core of the partnership, creating the product, setting rates, designing the marketing, approving applications, and servicing the loan. The bank merely funds the approved amount, transmitting the funds to the borrower and putting their name on the loan documents. The loan is then almost immediately sold to the non-bank lender.

HB 254 pulls back the curtain on these schemes, analyzing the entirety of these bank arrangements in order to determine who is conceiving of, directing, and benefiting from these predatory products. The bill will give Maryland's enforcement agencies a clear-criteria for assessing the "true lender" behind a loan product.

³ American First Finance website, accessed 1/19/2024

⁴ American First website: accessed 1/18/2024

⁵ CFPB Complaints Database #5968128

The True Lender Act Will Help Stop Rent-A-Bank Lending in Maryland

Maryland has a long history of passing and enforcing strong consumer protection laws, but high-cost lenders and the banks that partner with them are nimble predators, constantly innovating their products and structure to try and evade state law. After California passed a 36% rate cap on some loan products in 2019, Elevate Credit had this to say in an earnings call:

“[W]e expect to be able to continue to serve California consumers via bank sponsors that are not subject to the same proposed state level rate limitations.”⁶

HB 254 will codify the true lender doctrine in order to make these evasions less possible and force lenders to comply with state law.

In the last several years, New Mexico, Illinois, Minnesota, Maine, and Connecticut have all passed similar bills. Maryland should follow in their footsteps and ensure that their strong lending and consumer protection laws are effective in stopping all predatory loans, regardless of how they reach Maryland’s most vulnerable borrowers.

Thank you for your attention to this important issue.

Sincerely,

Whitney Barkley-Denney
Deputy Director of State Campaigns
Center for Responsible Lending

⁶ Elevate Credit Inc. earnings call, pages 5–6, 10; July 29, 2019, SeekingAlpha.com

HB 254 - CPD - memo in support.pdf

Uploaded by: Wilson Meeks

Position: FAV

ANTHONY G. BROWN
Attorney General

CANDACE MCLAREN LANHAM
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

LEONARD HOWIE
Deputy Attorney General



WILLIAM D. GRUHN
Chief
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STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
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January 23, 2024

To: The Honorable C. T. Wilson
Chair, Economic Matters Committee

From: Wilson M. Meeks – Consumer Protection Division

Re: House Bill 254 – Credit Regulation – Predatory Loan Prevention (True Lender Act)
(SUPPORT)

The Consumer Protection Division of the Office of the Attorney General supports House Bill 254, a Departmental bill introduced by the Commissioner of Financial Regulation. House Bill 254 is targeted at preventing non-bank companies from using pretextual affiliations with non-Maryland chartered banks and credit unions to circumvent Maryland's usury and licensing laws. House Bill 254 creates a statutory framework for analyzing when such non-banks, rather than their out-of-state bank affiliates, are the "true lenders" of Maryland loans, and thus are subject to Maryland lending laws, by looking at the economic substance of the loan transactions, rather than their form.

The Division believes that Maryland law already looks to the economic substance of lending transactions to determine who the true lender behind Maryland loans is, and whether a loan transaction is usurious, and thus that companies using pretextual relationships with out-of-state banks to provide loans that would be usurious in Maryland already are subject to Maryland lending laws.¹ However, companies at times seek to circumvent this law.

¹ See *CashCall, Inc. v. Maryland Com'r of Fin. Regul.*, 448 Md. 412, 436 (2016) ("In exchange for CashCall's role in assisting consumers to obtain the aforementioned loans, CashCall received, through contracts with the banks, the exclusive right to collect all payments of principal, interest and fees, including the origination fee. This arrangement, in essence, rendered CashCall the de facto lender."); *Nationstar Mortg. LLC v. Kemp*, 476 Md. 149, 159 (2021) ("Usury is a moral taint wherever it exists and no subterfuge shall be permitted to conceal it from the eye of the law.... [I]t matters not in what part of the transaction it may lurk, or what form it may take ... or whether it be a pretended sale and lease, or under whatever guise the lender – always fruitful in expedients – may attempt to evade the law, Courts of justice, disregarding the shadow and looking to the substance, will ascertain what in truth was the contract between the parties.") (citations omitted).

The Honorable C. T. Wilson
House Bill 254
January 23, 2024
Page Two

By way of background, under the federal Depository Institutions Deregulation and Monetary Control Act of 1980, banks are permitted to “export” their home state’s interest rate to other states. Thus, for example, a bank chartered in a state with no interest rate cap can offer loans in Maryland that would otherwise violate Maryland’s interest rate restrictions. Companies, including Fintech companies, are exploiting this federal law by creating partnerships with out-of-state banks to offer high interest rate loans in states like Maryland with lower usury rate caps. Some of these companies, however, do not merely facilitate lending transactions between Maryland consumers and out-of-state banks. Instead, in economic substance these companies are acting as lenders.

As stated, House Bill 254 creates a statutory framework for determining when it is the non-bank, rather than the out-of-state bank affiliate, that is providing Maryland loans, and thus whether the non-bank is subject to Maryland’s licensing and usury laws. Moreover, under House Bill 254, if the company’s affiliation with the out of state bank is determined to be a “device, subterfuge, or pretense” to evade Maryland law, the company’s loans will be deemed “void and unenforceable.” House Bill 254 likewise prohibits using subterfuge to disguise loans as personal property sale and leaseback transactions, or as cash rebates for pretextual installment sales—devices employed by companies using pretextual relationships with out-of-state banks attempting to circumvent state lending laws. Such disguised loans would also be void and unenforceable.

The Division supports House Bill 254 because it provides a clear framework for determining the “true lender” behind loan transactions and seeks to protect Marylanders. Companies should not be permitted either to use pretextual affiliations with out-of-state banks, or to disguise their loans as different kinds of transactions to circumvent Maryland lending laws. Such companies most often offer very high interest rate loans that are unlawful if Maryland law applies, and they target consumers who are financially vulnerable, who have poor credit and are desperate for funds, or who otherwise have little access to traditional lending.

cc. Members, Economic Matters Committee
The Honorable Anthony Salazar

ETA Written Opposition Testimony MD HB0254.pdf

Uploaded by: Claire Hebert

Position: UNF

January 19, 2024

**The Honorable C. T. Wilson
Chair of House Committee on Economic Matters**

**The Honorable Brian M. Crosby
Vice Chair of House Committee on Economic Matters**

**Maryland House of Delegates
House Office Building, Room 231
6 Bladen St., Annapolis, MD 21401**

Via Electronic Mail to: AA_ECM@mlis.state.md.us, ct.wilson@house.state.md.us,
brian.crosby@house.state.md.us

Re: Opposition Testimony to House Bill 254 – True Lender Act

Chair Wilson and Vice-Chair Crosby,

On behalf of the Electronic Transactions Association (“ETA”), the leading trade association for the payments industry, we appreciate the opportunity to provide this written testimony in opposition to House Bill 254 known as the “True Lender Act” that poses a significant threat to the stability of the lending market and, more importantly, to the ability of consumers and small businesses in Maryland to access affordable capital.

House Bill 254 would have far-reaching consequences on consumers and commercial lending in Maryland. Not only does this section raise serious concerns about disrupting the well-established framework for providing secure, long-term stability in the lending market, but it also runs counter to and conflicts with the principles outlined in the Maryland Installment Loan Act, specifically under Section 12-103 of the Maryland Code.

Small businesses, the backbone of our nation's economy, heavily rely on affordable and accessible capital to fuel their growth, hire new workers, and invest in their products. House Bill 254, however, introduces subjective factors that designate financial technology (“Fin Tech”) companies as the “true lenders,” thereby disregarding the crucial role played by banks in originating loans through contracted partnerships. This shift in perspective threatens to disrupt the highly regulated financial options that currently support credit-constrained small businesses in Maryland.

Rather than stifling innovation and disrupting well-established partnerships, ETA supports legislative efforts that encourage and promote new and leading-edge online lending models. Such models have the potential to strengthen the ability for consumers and small businesses to access credit by fostering innovation, encouraging healthy competition, ensuring affordability, and maintaining overall stability.

Section 12-1502(b) not only voids out any fees or interest on a loan in violation of the bill's provisions, but also voids out the principal of the loan. ETA encourages legislative efforts to modify this language so that the lender would be made whole and paid back the principal loan amount while waiving any interest, fees, or other charges if the loan conflicts with provisions of HB 254.

Section 12-1503(a) states that "a person is a lender subject to the requirements of the bill notwithstanding a claim by the person to be acting as an agent, as a service provider, or in another capacity for a covered lender...". ETA encourages an amendment to provide more flexibility to lenders by inserting the word "or" after "agent" and removing the term "or in another capacity".

Section 12-503(4) uses the same term "or in another capacity" that ETA requests to be removed from the bill to provide more flexibility to lenders.

HB 254 will restrict banks from assigning or transferring loans, with interest permissible prior to the transfer not allowed to follow the transfer of the loan. This disruption will harm the industry's on-going efforts to provide opportunities for all consumers and small businesses to access and benefit from innovative and inclusive financial products and services.

ETA and its members support an inclusive financial system that provides high quality, secure, and affordable financial services for the broadest possible set of consumers and small businesses. ETA encourages policymakers to support these efforts through policies that support innovation and the use of technology in financial products and services rather than legislative efforts to restrict this innovation and ability to access credit.

ETA stands ready to engage in constructive dialogue and collaboration to address the concerns raised by House Bill 254. We believe that by working together, we can find solutions that support the growth of small businesses, foster innovation, and maintain the stability of the lending market in Maryland.

* * * *

We appreciate you taking the time to consider these important issues. If you would like to discuss any aspect of our comments, please contact me or ETA Executive Vice President Scott Talbott at Stalbott@electran.org.

Respectfully Submitted,



Brian Yates
Senior Director, State Government Affairs
Electronic Transactions Association
202.677.7714 | byates@electran.org

HB0254_AFC_Goldfeder.pdf

Uploaded by: Phil Goldfeder

Position: UNF



American Fintech Council Testimony

TO: The House Committee on Economic Matters
FROM: Hon. Phil Goldfeder, CEO, American Fintech Council
DATE: January 23, 2024
SUBJECT: House Bill 254

Position: Oppose.

Testimony:

Thank you Chair Wilson, Vice-Chair Crosby, and members of the House Committee on Economic Matters for providing me the opportunity to testify before you in opposition to House Bill 254 (HB 254). My name is Phil Goldfeder, I am a former state legislator from New York and now continue in my public service as the CEO of the American Fintech Council (AFC).

Both as CEO of AFC and as a state legislator, I believe in developing sound public policy that ensures responsible actors can operate for the benefit of consumers, and discourages irresponsible actors from operating in an industry. During my time in the New York State Assembly, I crafted legislation to hold insurance companies accountable and make sure the families in my district were treated fairly in their time of greatest need. I was able to do this because I deeply understood the nuances of the industry and what was needed to ensure the irresponsible actors and practices were curtailed.

While I respect the bill's sponsors intent to find creative ways to curtail unwanted practices, as written, HB 254 devises regulatory tests for what constitutes the "true lender" of a loan that are inconsistent with established statutory, legal, and practical precedence, and create a confusing assessment of which entity, the bank or a fintech company, constitutes the true lender of a loan.

In practice, painting with this broad regulatory brush will only serve to stymie responsible actors in the space. The use of the tests established in HB 254 to determine the true lender of the loan will limit the ability for responsible banks and fintechs to operate in Maryland and, in turn, limit the availability of access to responsible credit for thousands of Marylanders currently have access to loans offered through a responsible bank-fintech partnership. Meanwhile, high-cost lenders will seek loopholes in order to continue offering their predatory products to the consumers previously served by the responsible lenders that make up AFC's membership.

As I noted, I strongly believe in developing sound public policy, and based on my experience, I believe there is a viable path to doing so on the true lender issue. The Illinois Predatory Loan Prevention Act, which sought to accomplish many of the same goals as HB 254, established an exemption to its true lender tests for loans originated at 36% interest and below. As noted in a

recent study by the Woodstock Institute, an Illinois-based consumer group,¹ this path stopped predatory lenders from operating in their state while also allowing responsible lenders the opportunity to continue serving Illinoisans who needed help the most. I believe that this is the right path for Maryland as well, especially as the federal funds rate continues to rise.

In closing, I thank you again for the opportunity to raise my concerns regarding HB 254. To ensure that Marylanders are able to receive responsible and innovative financial services, I request that this body carefully consider it seeks to determine the true lender of a loan.

¹ According to the Woodstock Institute's study, "After the PLPA, payday lenders, auto title lenders, and high-cost installment lenders closed while more affordable installment lenders expanded their business in Illinois. Since the PLPA, there are 172 new lender licenses/ branches." See, Woodstock Institute, "Illinois's Predatory Loan Prevention Act: The Impacts of the State's 36% Rate Cap, The PLPA is Working!" [Research Flyer], (Jan. 2024) available at https://woodstockinst.org/wp-content/uploads/2024/01/Woodstock_PLPA_ResearchReport_Flyer_FINAL.pdf. Full report available at https://woodstockinst.org/wp-content/uploads/2024/01/Woodstock_PLPA_ResearchReport_FN.pdf.

Maryland HB 254 Testimony_Tara Rider_Cross River f

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Position: UNF



The Honorable C. T. Wilson
Chair of House Committee on Economic Matters

The Honorable Brian M. Crosby
Vice Chair of House Committee on Economic Matters

Maryland House of Delegates
House Office Building, Room 231
6 Bladen St., Annapolis, MD 21401

Re: Opposition Testimony to House Bill 254 – True Lender Act

Chair Wilson, Vice-Chair Crosby, and members of the committee,

My name is Tara Rider and I represent Cross River Bank, a New Jersey state chartered, FDIC insured financial institution that combines the regulatory compliance and framework of a bank with innovative and responsible technologies to bring underserved and underbanked consumers safe and affordable access to credit across the country. I am writing to discuss the detrimental effects that House Bill 254 would have on our institution's ability to continue to provide over five hundred thousand Maryland consumers with much needed access to credit at competitive rates well below our thirty percent rate cap in New Jersey. To further show the consumer profile of who we are serving in Maryland, our average consumer FICO score in the state is 659 with an average loan size of \$1,500 and our average interest rate in the state is 23%.

As a leader and pioneer in the bank-partnership model, Cross River, as the lender, ensures all of the marketing, customer service, and compliance aspects of the partnership are in line with the bank. As the lender, Cross River originates loans and hold loans or portions of the loans, even if they are sold to an investor. Selling loans to investors is common-place across the industry; it allows banks, large-and-small, to free up space on their balance sheets to continue to originate loans to serve additional consumers. For example, bank partnerships that engage in responsible and transparent lending practices help improve the salability of the loans' servicing rights and/or securitized loans on the secondary market. Loan servicers are more confident in loans that have a feasibility of repayment assessment done prior to origination. On the market, the loans are securitized and sold to secondary investors who in turn will have a greater confidence in purchasing an asset-backed security that has less risk due to due diligence of the partnership, thereby creating a safer investment.

At Cross River, our goal and that of our partners is to provide access to responsible credit to those who have been historically underserved or excluded by the traditional financial system, and to ensure that consumers seeking access to credit are able to avoid high interest or predatory options. There are many alternatives to solve for high interest lending that both industry and advocates are aligned on. For example, the Woodstock Institute, a consumer advocate has championed responsible lenders who lend at 36% and below and recently

highlighted the success of that rate cap and the predominant economic test for loans above 36%. We would love for the opportunity to work with the legislature on those fixes prior to this bill moving forward to ensure that consumers are able to access responsible options. We have successfully worked with states such as California, Illinois, and New Mexico on measures to protect consumers without limiting access to credit and would welcome the opportunity to collaborate with you in a similar fashion.

Please let me know if you would like to discuss any of our comments or concerns.

Thank you.

Tara Rider | Head of State Government Affairs

trider@crossriver.com

HB0246_HB0254_Financial Technology Association.pdf

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Position: INFO



**Statement for the Record from the
Financial Technology Association**

**Before the
Maryland House Economic Matters Committee
January 23, 2024**

Chair Wilson, Vice Chair Crosby, and Members of the Committee, thank you for the opportunity to submit written testimony on HB 246 and 254.

FTA is a non-profit trade association representing leading digitally-native financial services companies, including earned wage access providers and consumer and commercial lenders. Our members support policy efforts that prioritize regulatory frameworks that spur innovation while safeguarding consumers. We appreciate the opportunity to testify today as the bills being considered could impact our members and have unintended consequences for Maryland residents.

First, HB 246 could curtail access to Earned Wage Access (EWA) products. Today, EWA products help tens of thousands of Marylanders – and millions of consumers nationwide – better manage cash flows between pay cycles while avoiding traditional high-cost and predatory alternatives. A survey of nearly 5,000 national EWA customers found that ninety-three percent (93%) had a greater sense of financial control after using EWA, and ninety-one percent (91%) understand how the service works.¹

Furthermore, EWA, unlike credit products, is nonrecourse and there are no late fees, no interest rates, no evaluation of creditworthiness, and no impact on a consumer's credit score. While FTA EWA members are supportive of regulation, it's important that any regulatory framework reflect these consumer-centric elements.

When a new, innovative product is working well for consumers—and not subject to widespread complaints—we believe it is important for policymakers to take a calibrated approach to regulation. Because EWA products are not credit, we believe a purpose-built regulatory framework is more beneficial to—and protective of—consumers than force-fitting EWA products into legacy legal frameworks.

Therefore, we support the creation of an EWA registration and disclosure framework that prevents mandatory fees and collections proceedings. This approach would mitigate any perceived consumer risks, while not prematurely imposing ill-fitting requirements on an area of financial services innovation that is

¹ FTI Consulting, Re: Direct to Consumer Earned Wage Access User Survey Key Findings (July 7, 2021), available at <https://www.earnin.com/assets/pdf/FTI-Earned-wage-access-memo.pdf>.

benefiting consumers. To that end, numerous industry participants have come together to endorse such a framework as it has significant consumer protections and is intended to ensure that these products remain consumer-friendly, consumer-protective, non-abusive, and non-predatory. This framework has already been successfully adopted in Nevada and Missouri.² We would be happy to work with you on collectively moving a similar framework forward.

In addition, we have concerns about elements of HB 254 that would significantly impact bank-fintech partnerships. The bill contains provisions that will treat the non-bank in a bank partnership as the lender for state law purposes if it has the predominant economic interest in an underlying loan. If passed as drafted, this bill will upend fundamental and critical banking practices and restrict access to credit for low to moderate income consumers as well as underserved small businesses.³ As described in further detail by a recent Federal Reserve study, “these [bank-fintech] partnerships could help to move us toward a more inclusive financial system.”⁴

With the above potential consumer impacts in mind, we would be happy to work with the Committee to find a path forward that addresses Member concerns while retaining access to covered financial products and services. We appreciate the opportunity to provide our views on these important bills and look forward to working with you.

² Missouri Senate Bill 103 (2023), available at https://senate.mo.gov/23info/BTS_Web/Bill.aspx?SessionType=R&BillID=44662, and Nevada Senate Bill 290 (2023), available at <https://www.leg.state.nv.us/App/NELIS/REL/82nd2023/Bill/10146/Overview>.

³ It is necessary to the functioning of bank lending and credit origination that banks have the ability to subsequently sell or transfer loans in order to generate the capacity for further lending; the predominant economic interest test will force banks to retain loans, thereby increasing risk exposure and reducing their capacity to extend further credit. Furthermore, if non-bank purchasers of loans cannot enforce those loans on the same terms as the originating bank, the secondary market demand for such loans will decrease or disappear, and banks will no longer originate them. See Honigsberg C., Jackson R. J., and Squire R. (November 2017). *How Does Legal Enforceability Affect Consumer Lending? Evidence from a Natural Experiment*, University of Chicago Journal of Law and Economics, vol. 60 no. 4; available at <https://www.journals.uchicago.edu/doi/abs/10.1086/695808>

⁴ Chernoff, A. and Jagtiani, J. (2023), *The Role of Bank-Fintech Partnerships in Creating a More Inclusive Banking System*, available at <https://www.philadelphiafed.org/-/media/frbp/assets/working-papers/2023/wp23-21.pdf>. See also Ellichehausen, G. and Simona, H. M. (2023), *FinTech and Banks: Strategic Partnerships That Circumvent State Usury Laws*, Finance and Economics Discussion Series 2023-056, Federal Reserve Board, Washington, D.C. ISSN 1936-2854 (Print) ISSN 2767-3898 (Online), available at <https://www.federalreserve.gov/econres/feds/files/2023056pap.pdf>, which shows that state-chartered banks that can effectively export their home state interest rates expand access to responsible credit products for near-prime and low-prime consumers.