

**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.<sup>1</sup>

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<sup>1</sup> 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.