Testimony of the American Financial Services Association in opposition to HB 6055

Before the House Corporations Committee
State of Rhode Island General Assembly

Testimony of Danielle Fagre Arlowe, Senior Vice President
American Financial Services Association

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Mr. Chair and members of the Committee, I am Danielle Fagre Arlowe, Senior Vice President of the American Financial Services Association (AFSA). Thank you for the opportunity to submit testimony in opposition to HB 6055.

Our association is more than 100 years old. We represent the consumer credit industry, including the vehicle finance industry, mortgages, direct small dollar and larger dollar lending, and credit cards. Our members include everyone from small creditors operating in one state to some of the world's largest banks. We do not represent payday lenders or title lenders. We do not represent credit unions.

We have grave concerns about HB 6055, and I suspect they are different than others presented today. Opting out of the Depository Institutions and Monetary Control Act of 1980 (DIDMCA) has consequences that have nothing to do with the bank partnership model that many call "rent-a-bank." This is a much more complicated issue than DIDMCA opt-out enthusiasts profess. This is something that prior to Colorado's law—a law that was enjoined from going into effect and is currently on appeal in the 10th Circuit—hasn't been touched by any state in over 30 years for a reason.

AFSA's concerns about this bill are about our numerous members that own and operate their own state-chartered federally insured bank. For example, a large credit card company that from the outside looks like its peers is in fact a state-chartered bank. Another member that looks like a captive vehicle finance company from the outside is in fact a direct lender and a bank; another member is a captive finance company that uses its affiliate state-chartered bank as a liquidity option and as a financing option for vehicle floor planning (*i.e.* extending credit to automobile dealers to finance the cars in their showrooms and on their lots), or funding consumer vehicle purchases for different brands of vehicles that aren't the captive's own make and models.

A state charter offers a bank certainty, predictability, consistency—DIDMCA put state-chartered banks on an even ground with national banks, just as it was intended to do. State opt-outs of

DIDMCA present an **existential threat** to a variety of our members' business models. That threat is what drives AFSA's deep concern over HB 6055.

WHAT IS DIDMCA?

The Depository Institutions and Monetary Control Act of 1980 was passed by Congress after the Supreme Court's *Marquette* decision holding the National Bank Act permits national banks to export rates to other states. DIDMCA established parity for state banks after *Marquette*, saying state-chartered federally insured banks can export rates too. But Congress also allowed states to opt out of this rate exportation, and within three years between 1980 and 1983, seven states opted out of DIDMCA: Iowa, Colorado, Maine, Massachusetts, Wisconsin, Nebraska, and North Carolina.

But then starting in 1986 and through 1998, every state except Iowa reversed course and opted back *in* to DIDMCA. Why? Were they protecting their states' consumers *too much*? Or did it turn out that opting out of DIDMCA didn't do what they thought it would, and hurt their own states' banks more than it helped consumers?

Today, Iowa has many deregulated rates and fees for consumer credit with a notable exception of a 21% rate cap on installment lending, greatly limiting the effects of the state's opt-out. But in states that aren't deregulated, opting out would have a far greater impact than in Iowa.

The big bet and assumption in the current frenzied rush to push to opt out of DIDMCA is that opting out will prevent *other* states' banks from exporting rates into the state that opts out. Reasonable people can—and do—disagree on that point and that is the subject of the Colorado litigation. But in the meantime, there is grave collateral damage done to state-chartered banks in general.

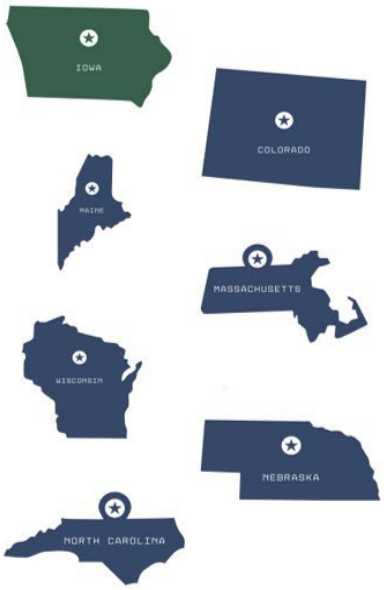
THE DUAL BANKING SYSTEM

The "dual banking system" goes back to the civil war, but the modern dual banking system relies on a level playing field between state chartered and nationally chartered banks. When a state opts out of DIDMCA, the state-chartered banks based there are devalued *by definition*. Even state-chartered banks that do not export to consumers in other states are devalued—because if their state opts out of DIDMCA they no longer have the *choice*. Their charter is worth less than it was before their state opted out of DIDMCA.

But you don't have to believe me. Ask any outside counsel who deals in these matters if they are currently recommending would-be banks to seek a state charter. The answer is no. Just *one* state opting out 40 years after the last state opted out—a law that doesn't even go into effect until later this year—plus other states merely *considering* opting out has upset the market enough to produce a level of uncertainty that is too risky to recommend.

Thank you so much for the opportunity to express AFSA's grave concerns about HB 6055 today. We welcome any questions or further discussion at the Committee's convenience, or directly with any Member of the House or their staff.

DIDMCA



STATE	OPT-OUT	OPT BACK IN/ REPEAL OPT-OUT
Iowa	1980	X
Colorado	1981, 2023	1994
Maine	1981	1995
Massachusetts	1981	1986
Wisconsin	1981	1998
Nebraska	1982	1988
North Carolina	1983	1995

DIDMCA STATE TIMELINE