NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S10688

SPONSOR: MYRIE

TITLE OF BILL:

An act to amend the banking law and the financial services law, in relation to opting the state out of certain provisions of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221

PURPOSE:

To exercise New York's express authority under section 525 of the federal Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA); restore otherwise applicable New York law to consumer credit made in New York through covered state-chartered institutions.

SUMMARY OF PROVISIONS:

Section 1 establishes the legislative findings.

Section 2 amends Subdivision 7 of section 14-a of the banking law, as added by chapter 883 of the laws of 1980.

Section 3 amends the financial services law by adding a new article 11 called Applicable Interest Limitations.

Section 4 is the severability clause.

Section 5 sets the effective date on the one hundred eightieth day after it becomes a law.

JUSTIFICATION:

New York law generally limits civil interest and treats knowingly charging or receiving more than twenty-five percent without lawful authorization as criminal usury. Yet New Yorkers are currently offered consumer credit, including credit cards, at annual percentage rates above twenty-five percent through programs involving state-chartered institutions located in jurisdictions permitting higher rates.

Those offers are currently lawful under federal law. Section 521 of DIDMCA, codified at 12 U.S.C. § 1831d, permits a federally insured state-chartered institution to invoke specified federal authority based on the law where the bank is located. But Congress included § 525, which expressly permits a state to declare that it does not want that authority to apply to loans made in the state. This bill makes that election for New York.

This bill recognizes that remote credit is not made solely at a lender's headquarters. A New York resident may be solicited here, apply and accept here, receive access to credit here, incur the debt here, pay through a New York account, and be serviced and collected from here. The bill therefore provides that a transaction may be made in more than one state and is made in New York when a New York consumer and a material New York transactional act are present.

Binding Second Circuit authority likewise recognizes New York's substantial interest in remote lending where New York residents apply, receive credit and authorize repayment here (Otoe-Missouria Tribe of Indians v. New York State Department of Financial Services, 769 F.3d 105 (2d Cir. 2014)).

LEGISLATIVE HISTORY:

New Bill

FISCAL IMPLICATIONS:

To be determined.

EFFECTIVE DATE:

This act shall take effect on the one hundred eightieth day after it shall have become a law.