

112TH CONGRESS  
2D SESSION

# S. 3452

To amend the Truth in Lending Act to establish a national usury rate  
for consumer credit transactions.

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IN THE SENATE OF THE UNITED STATES

JULY 26, 2012

Mr. DURBIN (for himself, Mrs. BOXER, Mr. MERKLEY, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the Truth in Lending Act to establish a national  
usury rate for consumer credit transactions.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Consumers  
5 from Unreasonable Credit Rates Act of 2012”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) attempts have been made to prohibit usu-  
9 rious interest rates in America since colonial times;

1           (2) at the Federal level, in 2006, Congress en-  
2           acted a Federal 36-percent annualized usury cap for  
3           service members and their families for covered credit  
4           products, as defined by the Department of Defense,  
5           which curbed payday, car title, and tax refund lend-  
6           ing around military bases;

7           (3) notwithstanding such attempts to curb  
8           predatory lending, high-cost lending persists in all  
9           50 States due to loopholes in State laws, safe harbor  
10          laws for specific forms of credit, and the exportation  
11          of unregulated interest rates permitted by preemp-  
12          tion;

13          (4) due to the lack of a comprehensive Federal  
14          usury cap, consumers annually pay approximately  
15          \$23,700,000,000 for high-cost overdraft loans, as  
16          much as \$8,100,000,000 for storefront and online  
17          payday loans, and additional amounts in unreported  
18          revenues from bank direct deposit advance loans and  
19          high-cost online installment loans;

20          (5) cash-strapped consumers pay on average  
21          400 percent annual interest for payday loans, 300  
22          percent annual interest for car title loans, up to  
23          3,500 percent for bank overdraft loans, and triple-  
24          digit rates for online installment loans;

1           (6) a national maximum interest rate that in-  
2           cludes all forms of fees and closes all loopholes is  
3           necessary to eliminate such predatory lending; and

4           (7) alternatives to predatory lending that en-  
5           courage small dollar loans with minimal or no fees,  
6           installment payment schedules, and affordable re-  
7           payment periods should be encouraged.

8   **SEC. 3. NATIONAL MAXIMUM INTEREST RATE.**

9           The Truth in Lending Act (15 U.S.C. 1601 et seq.)  
10          is amended by adding at the end the following:

11   **“SEC. 141. MAXIMUM RATES OF INTEREST.**

12           “(a) IN GENERAL.—Notwithstanding any other pro-  
13          vision of law, no creditor may make an extension of credit  
14          to a consumer with respect to which the fee and interest  
15          rate, as defined in subsection (b), exceeds 36 percent.

16           “(b) FEE AND INTEREST RATE DEFINED.—

17           “(1) IN GENERAL.—For purposes of this sec-  
18          tion, the fee and interest rate includes all charges  
19          payable, directly or indirectly, incident to, ancillary  
20          to, or as a condition of the extension of credit, in-  
21          cluding—

22                   “(A) any payment compensating a creditor  
23                   or prospective creditor for—

24                           “(i) an extension of credit or making  
25                           available a line of credit, such as fees con-

1           nected with credit extension or availability  
2           such as numerical periodic rates, annual  
3           fees, cash advance fees, and membership  
4           fees; or

5           “(ii) any fees for default or breach by  
6           a borrower of a condition upon which cred-  
7           it was extended, such as late fees, creditor-  
8           imposed not sufficient funds fees charged  
9           when a borrower tenders payment on a  
10          debt with a check drawn on insufficient  
11          funds, overdraft fees, and over limit fees;

12          “(B) all fees which constitute a finance  
13          charge, as defined by rules of the Bureau in ac-  
14          cordance with this title;

15          “(C) credit insurance premiums, whether  
16          optional or required; and

17          “(D) all charges and costs for ancillary  
18          products sold in connection with or incidental to  
19          the credit transaction.

20          “(2) TOLERANCES.—

21          “(A) IN GENERAL.—With respect to a  
22          credit obligation that is payable in at least 3  
23          fully amortizing installments over at least 90  
24          days, the term ‘fee and interest rate’ does not  
25          include—

1           “(i) application or participation fees  
2           that in total do not exceed the greater of  
3           \$30 or, if there is a limit to the credit line,  
4           5 percent of the credit limit, up to \$120,  
5           if—

6                   “(I) such fees are excludable  
7                   from the finance charge pursuant to  
8                   section 106 and regulations issued  
9                   thereunder;

10                   “(II) such fees cover all credit  
11                   extended or renewed by the creditor  
12                   for 12 months; and

13                   “(III) the minimum amount of  
14                   credit extended or available on a cred-  
15                   it line is equal to \$300 or more;

16           “(ii) a late fee charged as authorized  
17           by State law and by the agreement that  
18           does not exceed either \$20 per late pay-  
19           ment or \$20 per month; or

20           “(iii) a creditor-imposed not sufficient  
21           funds fee charged when a borrower tenders  
22           payment on a debt with a check drawn on  
23           insufficient funds that does not exceed  
24           \$15.

1           “(B) ADJUSTMENTS FOR INFLATION.—

2           The Bureau may adjust the amounts of the tol-  
3           erances established under this paragraph for in-  
4           flation over time, consistent with the primary  
5           goals of protecting consumers and ensuring  
6           that the 36-percent fee and interest rate limita-  
7           tion is not circumvented.

8           “(c) CALCULATIONS.—

9           “(1) OPEN END CREDIT PLANS.—For an open  
10          end credit plan—

11           “(A) the fee and interest rate shall be cal-  
12          culated each month, based upon the sum of all  
13          fees and finance charges described in subsection  
14          (b) charged by the creditor during the pre-  
15          ceding 1-year period, divided by the average  
16          daily balance; and

17           “(B) if the credit account has been open  
18          less than 1 year, the fee and interest rate shall  
19          be calculated based upon the total of all fees  
20          and finance charges described in subsection  
21          (b)(1) charged by the creditor since the plan  
22          was opened, divided by the average daily bal-  
23          ance, and multiplied by the quotient of 12 di-  
24          vided by the number of full months that the  
25          credit plan has been in existence.

1           “(2) OTHER CREDIT PLANS.—For purposes of  
2           this section, in calculating the fee and interest rate,  
3           the Bureau shall require the method of calculation  
4           of annual percentage rate specified in section  
5           107(a)(1), except that the amount referred to in  
6           that section 107(a)(1) as the ‘finance charge’ shall  
7           include all fees, charges, and payments described in  
8           subsection (b)(1) of this section.

9           “(3) ADJUSTMENTS AUTHORIZED.—The Bu-  
10          reau may make adjustments to the calculations in  
11          paragraphs (1) and (2), but the primary goals of  
12          such adjustment shall be to protect consumers and  
13          to ensure that the 36-percent fee and interest rate  
14          limitation is not circumvented.

15          “(d) DEFINITION OF CREDITOR.—As used in this  
16          section, the term ‘creditor’ has the same meaning as in  
17          section 702(e) of the Equal Credit Opportunity Act (15  
18          U.S.C. 1691a(e)).

19          “(e) NO EXEMPTIONS PERMITTED.—The exemption  
20          authority of the Bureau under section 105 shall not apply  
21          to the rates established under this section or the disclosure  
22          requirements under section 127(b)(6).

23          “(f) DISCLOSURE OF FEE AND INTEREST RATE FOR  
24          CREDIT OTHER THAN OPEN END CREDIT PLANS.—In  
25          addition to the disclosure requirements under section

1 127(b)(6), the Bureau may prescribe regulations requiring  
2 disclosure of the fee and interest rate established under  
3 this section.

4 “(g) RELATION TO STATE LAW.—Nothing in this  
5 section may be construed to preempt any provision of  
6 State law that provides greater protection to consumers  
7 than is provided in this section.

8 “(h) CIVIL LIABILITY AND ENFORCEMENT.—In addi-  
9 tion to remedies available to the consumer under section  
10 130(a), any payment compensating a creditor or prospec-  
11 tive creditor, to the extent that such payment is a trans-  
12 action made in violation of this section, shall be null and  
13 void, and not enforceable by any party in any court or  
14 alternative dispute resolution forum, and the creditor or  
15 any subsequent holder of the obligation shall promptly re-  
16 turn to the consumer any principal, interest, charges, and  
17 fees, and any security interest associated with such trans-  
18 action. Notwithstanding any statute of limitations or  
19 repose, a violation of this section may be raised as a mat-  
20 ter of defense by recoupment or setoff to an action to col-  
21 lect such debt or repossess related security at any time.

22 “(i) VIOLATIONS.—Any person that violates this sec-  
23 tion, or seeks to enforce an agreement made in violation  
24 of this section, shall be subject to, for each such violation,

1 1 year in prison and a fine in an amount equal to the  
2 greater of—

3 “(1) 3 times the amount of the total accrued  
4 debt associated with the subject transaction; or

5 “(2) \$50,000.

6 “(j) STATE ATTORNEYS GENERAL.—An action to en-  
7 force this section may be brought by the appropriate State  
8 attorney general in any United States district court or any  
9 other court of competent jurisdiction within 3 years from  
10 the date of the violation, and such attorney general may  
11 obtain injunctive relief.”.

12 **SEC. 4. DISCLOSURE OF FEE AND INTEREST RATE FOR**  
13 **OPEN END CREDIT PLANS.**

14 Section 127(b)(6) of the Truth in Lending Act (15  
15 U.S.C. 1637(b)(6)) is amended by striking “the total fi-  
16 nance charge expressed” and all that follows through the  
17 end of the paragraph and inserting “the fee and interest  
18 rate, displayed as ‘FAIR’, established under section 141.”.

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