

115TH CONGRESS
1ST SESSION

H. R. 3299

To amend the Revised Statutes, the Home Owners' Loan Act, the Federal Credit Union Act, and the Federal Deposit Insurance Act to require the rate of interest on certain loans remain unchanged after transfer of the loan, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 19, 2017

Mr. MCHENRY (for himself and Mr. MEEKS) introduced the following bill;
which was referred to the Committee on Financial Services

A BILL

To amend the Revised Statutes, the Home Owners' Loan Act, the Federal Credit Union Act, and the Federal Deposit Insurance Act to require the rate of interest on certain loans remain unchanged after transfer of the loan, and for other purposes.

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 Access to Credit Act of 2017”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the contractual doctrine of valid when made
2 which, as applied to lending agreements, provides
3 that a loan that is valid at inception cannot become
4 usurious upon subsequent sale or transfer to another
5 person;

6 (2) this important and longstanding principle
7 derives from the common law and its application has
8 been a cornerstone of United States banking law for
9 nearly 200 years, as provided in the case *Nichols v.*
10 *Fearson*, 32 U.S. (7 Pet.) 103, 106 (1833), where
11 the Supreme Court famously declared: “Yet the rule
12 of law is everywhere acknowledged, that a contract
13 free from usury in its inception, shall not be invali-
14 dated by any subsequent usurious transactions upon
15 it.”;

16 (3) in 2016, the Solicitor General, in consulta-
17 tion with all Federal banking regulators, filed an
18 amicus brief in the case of *Midland Funding, LLC*
19 *v. Madden*, 136 S. Ct. 2505 (2016) (mem.), denying
20 cert. to 786 F.3d 246 (2d Cir. 2015), that described
21 the United States Court of Appeals for the Second
22 Circuit in that case “incorrect” with an “analysis
23 reflect[ing] a misunderstanding” of section 85 of the
24 National Bank Act and Supreme Court precedent,

1 because it contradicted the contractual doctrine of
2 valid when made;

3 (4) the valid-when-made doctrine, by bringing
4 certainty to the legal treatment of all valid loans
5 that are transferred, greatly enhances liquidity in
6 the credit markets by widening the potential pool of
7 loan buyers and reducing the cost of credit to bor-
8 rowers at the time of origination;

9 (5) a joint academic study from professors at
10 Stanford, Fordham, and Columbia universities con-
11 cluded that the *Madden v. Midland* decision has al-
12 ready disproportionately affected low- and moderate-
13 income individuals in the United States with lower
14 FICO scores; and

15 (6) if the valid-when-made doctrine is not re-
16 affirmed soon by Congress, the lack of access to safe
17 and affordable financial services will force house-
18 holds in the United States with the fewest resources
19 to seek financial products that are nontransparent,
20 fail to inform consumers about the terms of credit
21 available, and do not comply with State and Federal
22 laws (including regulations).

23 **SEC. 3. RATE OF INTEREST AFTER TRANSFER OF LOAN.**

24 (a) AMENDMENT TO THE REVISED STATUTES.—Sec-
25 tion 5197 of the Revised Statutes (12 U.S.C. 85) is

1 amended by adding at the end the following: “A loan that
2 is valid when made as to its maximum rate of interest
3 in accordance with this section shall remain valid with re-
4 spect to such rate regardless of whether the loan is subse-
5 quently sold, assigned, or otherwise transferred to a third
6 party, and may be enforced by such third party notwith-
7 standing any State law to the contrary.”.

8 (b) AMENDMENT TO THE HOME OWNERS’ LOAN
9 ACT.—Section 4(g) of the Home Owners’ Loan Act (12
10 U.S.C. 1463(g)) is amended by adding at the end the fol-
11 lowing:

12 “(3) A loan that is valid when made as to its max-
13 imum rate of interest in accordance with this subsection
14 shall remain valid with respect to such rate regardless of
15 whether the loan is subsequently sold, assigned, or other-
16 wise transferred to a third party, and may be enforced
17 by such third party notwithstanding any State law to the
18 contrary.”.

19 (c) AMENDMENT TO THE FEDERAL CREDIT UNION
20 ACT.—Section 205(g) of the Federal Credit Union Act (12
21 U.S.C. 1785(g)) is amended by adding at the end the fol-
22 lowing:

23 “(3) A loan that is valid when made as to its max-
24 imum rate of interest in accordance with this subsection
25 shall remain valid with respect to such rate regardless of

1 whether the loan is subsequently sold, assigned, or other-
2 wise transferred to a third party, and may be enforced
3 by such third party notwithstanding any State law to the
4 contrary.”.

5 (d) AMENDMENT TO THE FEDERAL DEPOSIT INSUR-
6 ANCE ACT.—Section 27 of the Federal Deposit Insurance
7 Act (12 U.S.C. 1831d) is amended by adding at the end
8 the following:

9 “(e) A loan that is valid when made as to its max-
10 imum rate of interest in accordance with this section shall
11 remain valid with respect to such rate regardless of wheth-
12 er the loan is subsequently sold, assigned, or otherwise
13 transferred to a third party, and may be enforced by such
14 third party notwithstanding any State law to the con-
15 trary.”.

16 **SEC. 4. RULE OF CONSTRUCTION.**

17 Nothing in this Act may be construed as limiting the
18 authority or jurisdiction of the Office of the Comptroller
19 of the Currency, the Federal Deposit Insurance Corpora-
20 tion, the Board of Governors of the Federal Reserve Sys-
21 tem, the Bureau of Consumer Financial Protection, or the
22 National Credit Union Administration.

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