

Union Calendar No. 402

115TH CONGRESS
2^D SESSION

H. R. 3299

[Report No. 115-538]

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

JANUARY 30, 2018

Additional sponsors: Ms. MOORE and Mr. HOLLINGSWORTH

JANUARY 30, 2018

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

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—

8 (1) the contractual doctrine of valid when made
9 which, as applied to lending agreements, provides
10 that a loan that is valid at inception cannot become
11 usurious upon subsequent sale or transfer to another
12 person;

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

23 (3) in 2016, the Solicitor General, in consulta-
24 tion with all Federal banking regulators, filed an
25 amicus brief in the case of *Midland Funding, LLC*

1 v. Madden, 136 S. Ct. 2505 (2016) (mem.), denying
2 cert. to 786 F.3d 246 (2d Cir. 2015), that described
3 the United States Court of Appeals for the Second
4 Circuit in that case “incorrect” with an “analysis
5 reflect[ing] a misunderstanding” of section 85 of the
6 National Bank Act and Supreme Court precedent,
7 because it contradicted the contractual doctrine of
8 valid when made;

9 (4) the valid-when-made doctrine, by bringing
10 certainty to the legal treatment of all valid loans
11 that are transferred, greatly enhances liquidity in
12 the credit markets by widening the potential pool of
13 loan buyers and reducing the cost of credit to bor-
14 rowers at the time of origination;

15 (5) a joint academic study from professors at
16 Stanford, Fordham, and Columbia universities con-
17 cluded that the Madden v. Midland decision has al-
18 ready disproportionately affected low- and moderate-
19 income individuals in the United States with lower
20 FICO scores; and

21 (6) if the valid-when-made doctrine is not re-
22 affirmed soon by Congress, the lack of access to safe
23 and affordable financial services will force house-
24 holds in the United States with the fewest resources
25 to seek financial products that are nontransparent,

1 fail to inform consumers about the terms of credit
2 available, and do not comply with State and Federal
3 laws (including regulations).

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

5 (a) AMENDMENT TO THE REVISED STATUTES.—Sec-
6 tion 5197 of the Revised Statutes (12 U.S.C. 85) is
7 amended by adding at the end the following: “A loan that
8 is valid when made as to its maximum rate of interest
9 in accordance with this section shall remain valid with re-
10 spect to such rate regardless of whether the loan is subse-
11 quently sold, assigned, or otherwise transferred to a third
12 party, and may be enforced by such third party notwith-
13 standing any State law to the contrary.”.

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

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

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

5 “(3) A loan that is valid when made as to its max-
6 imum rate of interest in accordance with this subsection
7 shall remain valid with respect to such rate regardless of
8 whether the loan is subsequently sold, assigned, or other-
9 wise transferred to a third party, and may be enforced
10 by such third party notwithstanding any State law to the
11 contrary.”.

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

16 “(c) A loan that is valid when made as to its max-
17 imum rate of interest in accordance with this section shall
18 remain valid with respect to such rate regardless of wheth-
19 er the loan is subsequently sold, assigned, or otherwise
20 transferred to a third party, and may be enforced by such
21 third party notwithstanding any State law to the con-
22 trary.”.

23 **SEC. 4. RULE OF CONSTRUCTION.**

24 Nothing in this Act may be construed as limiting the
25 authority or jurisdiction of the Office of the Comptroller

1 of the Currency, the Federal Deposit Insurance Corpora-
2 tion, the Board of Governors of the Federal Reserve Sys-
3 tem, the Bureau of Consumer Financial Protection, or the
4 National Credit Union Administration.

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