

106TH CONGRESS
1ST SESSION

H. R. 1684

To amend the Consumer Credit Protection Act and other banking laws to protect consumers who avail themselves of payday loans from usurious interest rates and exorbitant fees, perpetual debt, the use of criminal actions to collect debts, and other unfair practices by payday lenders, to encourage the States to license and closely regulate payday lenders, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 1999

Mr. RUSH introduced the following bill; which was referred to the Committee on Banking and Financial Services

A BILL

To amend the Consumer Credit Protection Act and other banking laws to protect consumers who avail themselves of payday loans from usurious interest rates and exorbitant fees, perpetual debt, the use of criminal actions to collect debts, and other unfair practices by payday lenders, to encourage the States to license and closely regulate payday lenders, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Payday Borrower Pro-
3 tection Act of 1999”.

4 **SEC. 2. PAYDAY LOANS PROHIBITED UNLESS AUTHORIZED**
5 **PURSUANT TO STATE LAW THAT LICENSES**
6 **AND REGULATES PAYDAY LENDERS.**

7 (a) IN GENERAL.—Section 128 of the Truth in Lend-
8 ing Act (15 U.S.C. 1638) is amended by adding at the
9 end the following new subsection:

10 “(e) DEFERRED DEPOSIT LOANS.—

11 “(1) DEFINITIONS.—For purposes of this sub-
12 section, the following definitions shall apply:

13 “(A) CHECK.—The term ‘check’ means
14 any negotiable demand draft drawn on or pay-
15 able through an office of a depository institu-
16 tion (as defined in section 19(b)(1)(A) of the
17 Federal Reserve Act) located in the United
18 States.

19 “(B) DEFERRED DEPOSIT LOAN.—The
20 term ‘deferred deposit loan’ means a trans-
21 action in which credit is extended by a payday
22 lender, for a specified period of time, upon re-
23 ceipt by the lender of—

24 (i) a check made by the borrower for
25 the amount of the credit extended, the pre-
26 sentment or negotiation of which, by mu-

1 tual agreement of the lender and borrower,
2 will be deferred for such specified period;
3 or

4 (ii) authorization from the borrower
5 for the payday lender to initiate an elec-
6 tronic fund transfer at the end of the spec-
7 ified period from the account of the bor-
8 rower for the amount of the credit ex-
9 tended.

10 “(C) PAYDAY LENDER.—The term ‘payday
11 lender’ means any person who extends credit to
12 any other person through a deferred deposit
13 loan.

14 “(2) PAYDAY LOANS PROHIBITED UNLESS AU-
15 THORIZED UNDER STATE LAWS THAT LICENSE AND
16 REGULATE SUCH LENDING.—No person may engage
17 in the business of making deferred deposit loans in
18 any State unless—

19 “(A) expressly authorized to do so under a
20 law of such State that the Board determines at
21 least meets, if not exceeds, all the requirements
22 described in section 4(b) of the Payday Bor-
23 rower Protection Act of 1999 with respect to
24 deferred deposit loans; and

1 “(B) such person maintains policies and
 2 procedures designed to prevent such person
 3 from violating any requirement of this title with
 4 regard to such loans or with regard to applica-
 5 tions, solicitations, or advertisements relating to
 6 such loans.

7 “(3) SITUS OF LOAN.—For purposes of para-
 8 graph (2), a deferred deposit loan shall be consid-
 9 ered to be made in the State in which the borrower
 10 receives the proceeds of the loan.

11 (b) EFFECTIVE DATE.—The amendment made by
 12 subsection (a) shall apply after the end of the 10-day pe-
 13 riod beginning on the date of the enactment of this Act.

14 **SEC. 3. REGULATION OF INVOLVEMENT OF DEPOSITORY**
 15 **INSTITUTIONS IN PAYDAY LENDING.**

16 Section 18 of the Federal Deposit Insurance Act (12
 17 U.S.C. 1828) is amended by adding at the end the fol-
 18 lowing new section:

19 “(t) PAYDAY LOANS.—

20 “(1) LOANS TO NONCOMPLIANT PAYDAY LEND-
 21 ERS PROHIBITED.—An insured depository institution
 22 may not—

23 “(A) make any deferred deposit loan, ei-
 24 ther directly or through any agent, unless—

1 “(i) such loan is in full compliance
2 with the law of the State in which such
3 loan is made; and

4 “(ii) the annual percentage rate (as
5 determined in accordance with section 107
6 of the Truth in Lending Act) applicable
7 with respect to such loan is less than 36
8 percent; or

9 “(B) make any loan to any payday lender
10 for purposes of financing deferred deposit loans
11 unless the depository institution ascertains that
12 such lender is in full compliance with the Truth
13 in Lending Act, the Electronic Fund Transfer
14 Act, and the law of the State in which any bor-
15 rower from such payday lender will receive the
16 proceeds of any such deferred deposit loan.

17 “(2) COMPLIANCE WITH STATE LAW.—For pur-
18 poses of determining compliance with this sub-
19 section, the Truth in Lending Act, the Electronic
20 Fund Transfer Act, and the law of any State with
21 regard to any deferred deposit loan made by any in-
22 sured depository institution or payday lender.

23 “(3) SITUS OF LOAN.—For purposes of this
24 subsection, a deferred deposit loan shall be consid-

1 ered to be made in the State in which the borrower
2 receives the proceeds of the loan.”.

3 **SEC. 4. STATE LICENSING AND REGULATION OF PAYDAY**
4 **LOANS.**

5 (a) IN GENERAL.—For purposes of protecting the
6 payment system and protecting the consumers of payday
7 loans from fraud, abuse, unfair practices, usurious rates
8 of interest, and exorbitant fees, it is the sense of the Con-
9 gress that the deferred deposit loans should only be lawful
10 in States in which laws and regulations are in effect that
11 meet the requirements described in subsection (b), as de-
12 termined by the Board of Governors of the Federal Re-
13 serve System.

14 (b) MINIMUM REQUIREMENTS FOR DEFERRED DE-
15 POSIT LOANS.—The law of any State meets the require-
16 ments of this subsection if a statute in effect in such State
17 includes the following:

18 (1) LICENSING REQUIREMENTS.—

19 (A) IN GENERAL.—Subject to subpara-
20 graphs (B) and (C), a requirement that any
21 payday lender, other than a depository institu-
22 tion (as defined in section 19(b)(1)(A) of the
23 Federal Reserve Act), be licensed and regulated
24 by an appropriate State agency in order to con-
25 duct any business within such State or make

1 any deferred deposit loan within the State (as
2 determined in accordance with paragraph (12)).

3 (B) DEPOSITORY INSTITUTIONS.—A re-
4 quirement that any depository institution which
5 makes deferred deposit loans in such State (as
6 determined in accordance with paragraph (12))
7 shall be subject to such statute and regulated
8 by an appropriate State agency with respect to
9 such lending activity.

10 (C) EXCEPTION.—A retail establishment
11 which occasionally cashes checks of customers
12 or advances credit in the form of merchandise
13 may be exempted from the licensing require-
14 ment described in subparagraph (A) if such ac-
15 tivity is merely incidental to the retail business
16 of such establishment.

17 (2) LICENSING STANDARDS.—A requirement
18 that—

19 (A) in order for any person to be licensed
20 in the State as a payday lender, the appropriate
21 State agency shall review and approve—

22 (i) the business record and the capital
23 adequacy of the business seeking the li-
24 cense; and

1 (ii) the competence, experience, char-
2 acter, integrity, and financial responsibility
3 of each individual who—

4 (I) is a director, officer, or super-
5 visory employee of such business; or

6 (II) owns or controls, directly or
7 indirectly, such business (including
8 any person who directly or indirectly
9 controls more than 5 percent of the
10 shares or assets of the business;

11 (B) any record, on the part of any business
12 seeking the license or any person referred to in
13 subparagraph (A)(ii), of—

14 (i) any criminal activity;

15 (ii) any fraud or other act of personal
16 dishonesty;

17 (iii) any act, omission, or practice
18 which constitutes a breach of a fiduciary
19 duty; or

20 (iv) any suspension or removal, by any
21 agency or department of the United States
22 or any State, from participation in the con-
23 duct of any federally or State licensed or
24 regulated business,

1 be grounds for the denial of any such license by
2 the appropriate State agency;

3 (C) the applicant establish to the satisfac-
4 tion of the appropriate State agency that the
5 operation of the business at each authorized lo-
6 cation is in the public interest, taking into ac-
7 count the probable effect of such operation in
8 promoting the convenience of, and meeting the
9 credit needs of, the community in which such
10 business is conducted; and

11 (D) the applicant and licensed payday
12 lender meet such surety bond requirements and
13 minimum asset requirements as may be estab-
14 lished and maintained by the appropriate State
15 agency.

16 (3) PUBLIC HEARINGS.—A requirement that
17 any application for a payday lender license be the
18 subject of a public hearing before any final deter-
19 mination is made with regard to such application by
20 the appropriate State agency.

21 (4) ADMINISTRATIVE ACTION.—Authority for
22 the appropriate State agency to issue regulations to
23 carry out the purposes of such statute, investigate
24 and enforce compliance with the statute and such
25 regulations, handle complaints, suspend or revoke li-

1 censes issued to payday lenders and impose civil
2 money penalties for violations of such statute or reg-
3 ulations, and make public the results of any such in-
4 vestigations or enforcement actions and the records
5 of any complaints.

6 (5) REPORTS AND RECORDS.—A requirement
7 that licensed payday lenders—

8 (A) maintain such records as the appro-
9 priate State agency determines are necessary to
10 enforce compliance with the statute; and

11 (B) submit annual reports to the appro-
12 priate State agency containing such information
13 as the agency determines to be appropriate to
14 allow the agency to enforce compliance with the
15 statute and regulations prescribed by the agen-
16 cy under the statute, including a copy of all
17 loan documents used by the payday lender in
18 connection with deferred deposit loans and a fee
19 schedule.

20 (6) PROHIBITIONS.—A prohibition on—

21 (A) the initiation of any criminal com-
22 plaint, or use of any threat of initiating a crimi-
23 nal complaint, in connection with the failure of
24 any borrower to repay any deferred deposit loan
25 in accordance with the terms of the loan, in-

cluding, with respect to any check which formed the basis for a deferred deposit loan, any complaint relating to the making of a check drawn on insufficient funds;

(B) any practice which is prohibited under section 808 of the Fair Debt Collection Practices Act for a debt collector (as defined in such Act);

(C) extending credit under any loan agreement which includes any terms which are unconscionable or against the public interest;

(D) engaging in any unfair or deceptive practice;

(E) accepting the repayment of any deferred deposit loan if the payday lender knows or has any reason to believe that the funds proffered by the borrower were acquired from the proceeds of another deferred deposit loan;

(F) refinancing or rolling over any deferred deposit loan for any period which ends after the date the principal of the original deferred deposit loan was due to be repaid in full; and

(G) imposing any additional fee or any premium for any credit insurance offered in conjunction with any deferred deposit loan.

1 (7) REQUIREMENTS RELATING TO TERMS AND
2 CONDITIONS.—A requirement that—

3 (A) the period to maturity of any deferred
4 deposit loan may not be less than 2 weeks for
5 each \$50 of loan principal;

6 (B) the principal amount of any deferred
7 deposit loan may not exceed \$300;

8 (C) any check which forms the basis of a
9 deferred deposit loan be stamped on the back
10 with an endorsement that the check has been
11 received and is being negotiated in connection
12 with a deferred deposit loan and any subse-
13 quent holder of the check takes it subject to all
14 claims and defenses of the maker;

15 (D) the annual percentage rate applicable
16 to any deferred deposit loan may not exceed the
17 lesser of—

18 (i) 36 percent; or

19 (ii) the maximum annual percentage
20 rate allowable in such State for comparable
21 small loans;

22 (E) the amount of any administrative fee
23 imposed in connection with making a deferred
24 deposit loan may not exceed \$5;

1 (F) any unearned interest on deferred de-
2 posit loans which are paid before the due date
3 shall be repaid to the borrower on an actuarial
4 basis; and

5 (G) the amount of any fee imposed for any
6 check made or any electronic fund transfer au-
7 thorized by a borrower in connection with any
8 deferred deposit loan which is returned unpaid
9 to the payday lender due to insufficient funds
10 in an account of such borrower may not exceed
11 the lesser of—

12 (i) \$15; or

13 (ii) the charge imposed by the finan-
14 cial institution returning the check to the
15 payday lender for handling such check.

16 (8) DISCLOSURES.—A requirement that the fol-
17 lowing information be disclosed in writing to a bor-
18 rower in connection with any deferred deposit loan
19 and posted in a prominent place at any location
20 where deferred deposit loans are made or extended:

21 (A) A complete description of the terms of
22 the loan.

23 (B) A complete description of the rights of
24 the borrower under the laws of the State, the
25 Truth in Lending Act, the Fair Debt Collection

1 Practices Act, the Electronic Fund Transfer
2 Act, and any other provision of law the appro-
3 priate State agency determines to be applicable
4 to such loan.

5 (C) A clear and conspicuous statement
6 that the borrower may not be subject to any
7 criminal action or any threat of criminal action
8 for making a check or authorizing an electronic
9 fund transfer which forms the basis for such
10 loan and is drawn on an account with insuffi-
11 cient funds.

12 (9) CIVIL ENFORCEMENT.—Provision for civil
13 remedies for violations of the statute with a min-
14 imum civil money penalty of \$1,000 for each day of
15 any violation of the statute by any payday lender, in-
16 cluding private rights of action for any actual, con-
17 sequential, or liquidated damages suffered by any
18 borrower, or a class of borrowers, in connection with
19 any such violation.

20 (10) CRIMINAL PENALTIES FOR OPERATION OF
21 BUSINESS WITHOUT A LICENSE.—A criminal penalty
22 for anyone, other than a depository institution, mak-
23 ing any payday loan within the State after the effec-
24 tive date of such State statute without a license
25 issued by the State.

1 (11) CRIMINAL PENALTIES FOR OTHER VIOLA-
2 TIONS OF THE STATUTE.—A provision that any per-
3 son who knowingly violates any provision of the stat-
4 ute, or any regulation prescribed under the statute,
5 shall be subject to a fine of \$1,000, imprisonment
6 for not to exceed 6 months, or both.

7 (12) SITUS OF LOAN.—A deferred deposit loan
8 is considered to be made in the State in which the
9 borrower will receive the proceeds of the loan.

10 (c) DEFINITIONS.—For purposes of this section, the
11 following definitions shall apply:

12 (1) DEPOSITORY INSTITUTION.—The term “de-
13 pository institution” has the meaning given to such
14 term in section 19(b)(1)(A) of the Federal Reserve
15 Act.

16 (2) OTHER TERMS.—The terms “deferred de-
17 posit loan”, “payday lender”, and “check” have the
18 meanings given to such terms in section 128(e)(1) of
19 the Truth in Lending Act.

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