

108TH CONGRESS  
2D SESSION

# H. R. 5251

To clarify the applicability of State law to national banks, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2004

Mr. FRANK of Massachusetts (for himself, Mr. GUTIERREZ, Mr. SHERMAN, Ms. WATERS, Mr. SANDERS, Ms. WATSON, Mr. CLAY, Mrs. MCCARTHY of New York, Ms. CARSON of Indiana, Mr. HINCHEY, Mr. PAUL, Mr. RANGEL, Mr. ACEVEDO-VILÁ, Mr. BRADY of Pennsylvania, Mr. SERRANO, Mr. DELAHUNT, Mr. DINGELL, Ms. LEE, Mr. WEINER, Mr. ACKERMAN, Ms. SLAUGHTER, Ms. SCHAKOWSKY, Mr. WAXMAN, and Mrs. MALONEY) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To clarify the applicability of State law to national banks,  
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 “Preservation of Fed-  
5       eralism in Banking Act”.

1 **SEC. 2. STATE LAW PREEMPTION STANDARDS FOR NA-**  
2 **TIONAL BANKS CLARIFIED.**

3 (a) IN GENERAL.—Chapter 1 of title LXII of the Re-  
4 vised Statutes of the United States (12 U.S.C. 21 et seq.)  
5 is amended by inserting after section 5136B the following  
6 new section:

7 **“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NA-**  
8 **TIONAL BANKS AND SUBSIDIARIES CLARI-**  
9 **FIED.**

10 “(a) STATE CONSUMER LAWS OF GENERAL APPLI-  
11 CATION.—

12 “(1) IN GENERAL.—Notwithstanding any other  
13 provision of Federal law, any State consumer law of  
14 general application (including any law relating to  
15 unfair or deceptive acts or practices and any con-  
16 sumer fraud law) shall apply to any national bank.

17 “(2) NATIONAL BANK DEFINED.—For purposes  
18 of this section, the term ‘national bank’ includes any  
19 Federal branch established in accordance with the  
20 International Banking Act of 1978.

21 “(b) STATE BANKING LAWS ENACTED PURSUANT TO  
22 FEDERAL LAW.—

23 “(1) IN GENERAL.—Notwithstanding any other  
24 provision of Federal law and except as provided in  
25 paragraph (2), any State law that—

26 “(A) is applicable to State banks; and

1 “(B) was enacted pursuant to or in accord-  
2 ance with, and is consistent with, an Act of  
3 Congress, including the Gramm-Leach-Bliley  
4 Act and the Consumer Credit Protection Act,  
5 that permits States to exceed or supplement the  
6 requirements of any comparable Federal law,  
7 shall apply to any national bank.

8 “(2) EXCEPTIONS.—Paragraph (1) shall not  
9 apply with respect to any State law if—

10 “(A) the State law discriminates against  
11 national banks; or

12 “(B) the State law is inconsistent with  
13 other provisions of Federal law, but only to the  
14 extent of the inconsistency (as determined in  
15 accordance with the other provision of Federal  
16 law).

17 “(c) NO NEGATIVE IMPLICATIONS FOR APPLICA-  
18 BILITY OF OTHER STATE LAWS.—No provision of this  
19 section shall be construed as altering or affecting the ap-  
20 plicability, to national banks, of any State law which is  
21 not described in subsection (a) or (b).”.

22 (b) DENIAL OF PREEMPTION NOT A DEPRIVATION OF  
23 A CIVIL RIGHT.—The preemption of any provision of the  
24 law of any State with respect to any national bank shall  
25 not be treated as a right, privilege, or immunity for pur-

1 poses of section 1979 of the Revised Statutes of the  
 2 United States (42 U.S.C. 1983).

3 (c) CLERICAL AMENDMENT.—The table of sections  
 4 for chapter 1 of title LXII of the Revised Statutes of the  
 5 United States is amended by inserting after the item relat-  
 6 ing to section 5136B the following new item:

“5136C. State law preemption standards for national banks and subsidiaries  
 clarified.”.

7 **SEC. 3. VISITORIAL STANDARDS.**

8 Section 5136C of the Revised Statutes of the United  
 9 States (as added by section 2(a) of this Act) is amended  
 10 by adding at the end the following new subsection:

11 “(d) VISITORIAL POWERS.—No provision of this title  
 12 which relates to visitorial powers or otherwise limits or re-  
 13 stricts the supervisory, examination, or regulatory author-  
 14 ity to which any national bank is subject shall be con-  
 15 strued as limiting or restricting the authority of any attor-  
 16 ney general (or other chief law enforcement officer) of any  
 17 State to bring any action in any court of appropriate juris-  
 18 diction—

19 “(1) to enforce any applicable Federal or State  
 20 law, as authorized by such law; or

21 “(2) on behalf of residents of such State, to en-  
 22 force any applicable provision of any Federal or  
 23 State law against a national bank, as authorized by  
 24 such law, or to seek relief and recover damages for

1 such residents from any violation of any such law by  
 2 any national bank.”.

3 **SEC. 4. CLARIFICATION OF LAW APPLICABLE TO STATE-**  
 4 **CHARTERED NONDEPOSITORY INSTITUTION**  
 5 **SUBSIDIARIES.**

6 Section 5136C of the Revised Statutes of the United  
 7 States (as added by section 2(a) of this Act) is amended  
 8 by inserting after subsection (d) (as added by section 3)  
 9 the following new subsection:

10 “(e) CLARIFICATION OF LAW APPLICABLE TO NON-  
 11 DEPOSITORY INSTITUTION SUBSIDIARIES OF NATIONAL  
 12 BANKS.—

13 “(1) IN GENERAL.—No provision of this title  
 14 shall be construed as preempting the applicability of  
 15 State law to any State-chartered nondepository insti-  
 16 tution subsidiary of a national bank, except to the  
 17 extent the preemption is explicitly provided by an  
 18 Act of Congress.

19 “(2) DEFINITIONS.—For purposes of this sec-  
 20 tion, the following definitions shall apply:

21 “(A) DEPOSITORY INSTITUTION, SUB-  
 22 SIDIARY.—The terms ‘depository institution’  
 23 and ‘subsidiary’ have the same meanings as in  
 24 section 3 of the Federal Deposit Insurance Act.

1                   “(B) NONDEPOSITORY INSTITUTION.—The  
2                   term ‘nondepository institution’ means any enti-  
3                   ty that is not a depository institution.”.

4   **SEC. 5. DATA COLLECTION AND REPORTING.**

5           (a) COLLECTING AND MONITORING CONSUMER COM-  
6   PLAINTS.—

7           (1) IN GENERAL.—The Comptroller of the Cur-  
8           rency shall record and monitor each complaint re-  
9           ceived directly or indirectly from a consumer regard-  
10          ing a national bank or any subsidiary of a national  
11          bank and record the resolution of the complaint.

12          (2) FACTORS TO BE INCLUDED.—In carrying  
13          out the requirements of paragraph (1), the Comp-  
14          troller of the Currency shall include—

15                (A) the date the consumer complaint was  
16                received;

17                (B) the nature of the complaint;

18                (C) when and how the complaint was re-  
19                solved, including a brief description of the ex-  
20                tent, and the results, of the investigation made  
21                by the Comptroller into the complaint, a brief  
22                description of any notices given and inquiries  
23                made to any other Federal or State officer or  
24                agency in the course of the investigation or res-  
25                olution of the complaint, a summary of the en-

1            enforcement action taken upon completion of the  
2            investigation, and a summary of the results of  
3            subsequent periodic reviews by the Comptroller  
4            of the extent and nature of compliance by such  
5            national bank or subsidiary with the enforce-  
6            ment action; and

7            (D) if the complaint involves any alleged  
8            violation of a State law (whether or not Federal  
9            law preempts the application of such State law  
10          to such national bank) by such bank, a cite to  
11          and a description of the State law that formed  
12          the basis of the complaint.

13          (b) REPORT TO THE CONGRESS.—

14            (1) PERIODIC REPORTS REQUIRED.—The  
15          Comptroller of the Currency shall submit a report  
16          semi-annually to the Congress on the consumer pro-  
17          tection efforts of the Office of the Comptroller of the  
18          Currency.

19            (2) CONTENTS OF REPORT.—Each report sub-  
20          mitted under paragraph (1) shall include the fol-  
21          lowing:

22            (A) The total number of consumer com-  
23          plaints received by the Comptroller during the  
24          period covered by the report with respect to al-  
25          leged violations of consumer protection laws by

1 national banks and subsidiaries of national  
2 banks.

3 (B) The total number of consumer com-  
4 plaints received during the reporting period that  
5 are based on each of the following:

6 (i) Each title of the Consumer Credit  
7 Protection Act (reported as a separate ag-  
8 gregate number for each such title).

9 (ii) The Truth in Savings Act.

10 (iii) The Right to Financial Privacy  
11 Act of 1978.

12 (iv) The Expedited Funds Availability  
13 Act.

14 (v) The Community Reinvestment Act  
15 of 1977.

16 (vi) The Bank Protection Act of 1968.

17 (vii) Title LXII of the Revised Stat-  
18 utes of the United States.

19 (viii) The Federal Deposit Insurance  
20 Act.

21 (ix) The Real Estate Settlement Pro-  
22 cedures Act of 1974.

23 (x) The Home Mortgage Disclosure  
24 Act of 1975.

25 (xi) Any other Federal law.



1 (xii) State consumer protection laws  
2 (reported as a separate aggregate number  
3 for each State and each State consumer  
4 protection law).

5 (xiii) Any other State law (reported  
6 separately for each State and each State  
7 law).

8 (C) A summary description of the resolu-  
9 tion efforts by the Comptroller for complaints  
10 received during the period covered, including—

11 (i) the average amount of time to re-  
12 solve each complaint;

13 (ii) the median period of time to re-  
14 solve each complaint;

15 (iii) the average and median time to  
16 resolve complaints in each category of com-  
17 plaints described in each clause of sub-  
18 paragraph (B); and

19 (iv) a summary description of the  
20 longest outstanding complaint during the  
21 reporting period and the reason for the dif-  
22 ficulty in resolving such complaint in a  
23 more timely fashion.

24 (3) DISCLOSURE OF REPORT ON OCC  
25 WEBSITE.—Each report submitted to the Congress

1       under this subsection shall be posted, by the Comp-  
2       troller of the Currency, in a timely fashion and  
3       maintained on the website of the Office of the  
4       Comptroller of the Currency on the World Wide  
5       Web.

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