

109TH CONGRESS
1ST SESSION

H. R. 1660

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

APRIL 14, 2005

Mr. RUSH introduced the following bill; which was referred to the Committee on 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 2005”.

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 2005 with respect to
24 deferred deposit loans; and

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 interest rate applica-
5 ble with respect to such loan is less than
6 36 percent (as determined without taking
7 into account any administrative fee which
8 meets the requirements of section
9 4(b)(7)(E) of the Payday Borrowers Pro-
10 tection Act of 2003); or

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

19 “(2) SITUS OF LOAN.—For purposes of para-
20 graph (1) and determining compliance with this sub-
21 section, the Truth in Lending Act, the Electronic
22 Fund Transfer Act, and the law of any State, a de-
23 ferred deposit loan shall be considered to be made
24 in the State in which the borrower receives the pro-
25 ceeds of the loan.”.

1 **SEC. 4. STATE LICENSING AND REGULATION OF PAYDAY**
2 **LOANS.**

3 (a) IN GENERAL.—For purposes of protecting the
4 payment system and protecting the consumers of payday
5 loans from fraud, abuse, unfair practices, usurious rates
6 of interest, and exorbitant fees, deferred deposit loans
7 shall only be lawful in States in which laws and regula-
8 tions are in effect that meet the requirements described
9 in subsection (b), as determined by the Board of Gov-
10 ernors of the Federal Reserve System.

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

15 (1) LICENSING REQUIREMENTS.—

16 (A) IN GENERAL.—Subject to subpara-
17 graphs (B) and (C), a requirement that any
18 payday lender, other than a depository institu-
19 tion (as defined in section 19(b)(1)(A) of the
20 Federal Reserve Act), be licensed and regulated
21 by an appropriate State agency in order to con-
22 duct any business within such State or make
23 any deferred deposit loan within the State (as
24 determined in accordance with paragraph (12)).

25 (B) DEPOSITORY INSTITUTIONS.—A re-
26 quirement that any depository institution which

1 makes deferred deposit loans in such State (as
2 determined in accordance with paragraph (12))
3 shall be subject to such statute and regulated
4 by an appropriate State agency with respect to
5 such lending activity.

6 (2) LICENSING STANDARDS.—A requirement
7 that—

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

11 (i) the business record and the capital
12 adequacy of the business seeking the li-
13 cense; and

14 (ii) the competence, experience, char-
15 acter, integrity, and financial responsibility
16 of each individual who—

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

19 (II) owns or controls, directly or
20 indirectly, such business (including
21 any person who directly or indirectly
22 controls more than 5 percent of the
23 shares or assets of the business;

1 (B) any record, on the part of any business
2 seeking the license or any person referred to in
3 subparagraph (A)(ii), of—

4 (i) any criminal activity;

5 (ii) any fraud or other act of personal
6 dishonesty;

7 (iii) any act, omission, or practice
8 which constitutes a breach of a fiduciary
9 duty; or

10 (iv) any suspension or removal, by any
11 agency or department of the United States
12 or any State, from participation in the con-
13 duct of any federally or State licensed or
14 regulated business,

15 be grounds for the denial of any such license by
16 the appropriate State agency;

17 (C) the applicant establish to the satisfac-
18 tion of the appropriate State agency that the
19 operation of the business at each authorized lo-
20 cation is in the public interest, taking into ac-
21 count the probable effect of such operation in
22 promoting the convenience of, and meeting the
23 credit needs of, the community in which such
24 business is conducted;

1 (D) the applicant and licensed payday
2 lender meet such surety bond requirements and
3 minimum asset requirements as may be estab-
4 lished and maintained by the appropriate State
5 agency; and

6 (E) in order for an applicant to meet the
7 requirements of subparagraph (D)—

8 (i) the applicant maintain a minimum
9 of \$50,000 of surety bond coverage for
10 each business location maintained by the
11 applicant; and

12 (ii) the proceeds of any such surety
13 bond coverage be available to pay any con-
14 sumer for any violation of any Federal or
15 State law relating to deferred deposit
16 loans.

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

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

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

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

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

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

21 (6) PROHIBITIONS.—A prohibition on—

22 (A) the initiation of any criminal action or
23 any civil proceeding, or use of any threat of ini-
24 tiating any such criminal action or civil pro-
25 ceeding, in connection with the failure of any

1 borrower to repay any deferred deposit loan in
2 accordance with the terms of the loan (other
3 than a proceeding directly related to the collec-
4 tion of such debt and actual damages), includ-
5 ing any criminal action or civil proceeding, or a
6 threat of any such action or proceeding, relat-
7 ing to the act of a customer in drawing a check
8 or authorizing an electronic fund transfer which
9 formed the basis for a payday loan and is
10 drawn on an account with insufficient funds;

11 (B) any practice which is prohibited under
12 section 808 of the Fair Debt Collection Prac-
13 tices Act for a debt collector (as defined in such
14 Act);

15 (C) extending credit under any loan agree-
16 ment which includes any terms which are un-
17 conscionable or against the public interest;

18 (D) engaging in any unfair or deceptive
19 practice;

20 (E) accepting the repayment of any de-
21 ferred deposit loan if the payday lender knows
22 or has any reason to believe that the funds
23 proffered by the borrower were acquired from
24 the proceeds of another deferred deposit loan;

1 (F) refinancing or rolling over any deferred
2 deposit loan, or initiating a new deferred de-
3 posit loan unless 30 days has elapsed from the
4 termination of any prior deferred deposit loan
5 from that payday lender (or any affiliate or
6 other associate of the payday lender) to the cus-
7 tomer;

8 (G) imposing any additional fee or any
9 premium for any credit insurance offered in
10 conjunction with any deferred deposit loan; and

11 (H) including any clause in the note or
12 other document related to the deferred deposit
13 loan which requires the consumer to submit any
14 claim or defense relating to the transaction to
15 binding arbitration or other nonjudicial pro-
16 ceeding.

17 (7) REQUIREMENTS RELATING TO TERMS AND
18 CONDITIONS.—A requirement that—

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

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

24 (C) any check which forms the basis of a
25 deferred deposit loan be stamped on the back

1 with an endorsement that the check has been
2 received and is being negotiated in connection
3 with a deferred deposit loan and any subse-
4 quent holder of the check takes it subject to all
5 claims and defenses of the maker;

6 (D) the annual interest rate applicable to
7 any deferred deposit loan may not exceed the
8 lesser of—

9 (i) 36 percent; or

10 (ii) the maximum annual percentage
11 rate allowable in such State for comparable
12 small loans;

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

16 (F) any unearned interest on deferred de-
17 posit loans which are paid before the due date
18 shall be repaid to the borrower on an actuarial
19 basis; and

20 (G) the amount of any fee imposed for any
21 check made or any electronic fund transfer au-
22 thorized by a borrower in connection with any
23 deferred deposit loan which is returned unpaid
24 to the payday lender due to insufficient funds

1 in an account of such borrower may not exceed
2 the lesser of—

3 (i) \$15; or

4 (ii) the charge imposed by the finan-
5 cial institution returning the check to the
6 payday lender for handling such check.

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

12 (A) A complete description of the terms of
13 the loan.

14 (B) A complete description of the rights of
15 the borrower under the laws of the State, the
16 Truth in Lending Act, the Fair Debt Collection
17 Practices Act, the Electronic Fund Transfer
18 Act, and any other provision of law the appro-
19 priate State agency determines to be applicable
20 to such loan.

21 (C) A clear and conspicuous statement
22 that the borrower may not be subject to any
23 criminal action or civil proceeding, or the use of
24 any threat of initiating any such criminal action
25 or civil proceeding, in connection with the fail-

1 ure of any borrower to repay any deferred de-
2 posit loan in accordance with the terms of the
3 loan (other than a proceeding directly related to
4 the collection of such debt and actual damages),
5 including any criminal action or civil pro-
6 ceeding, or a threat of any such action or pro-
7 ceeding, relating to the act of a customer in
8 drawing a check or authorizing an electronic
9 fund transfer which formed the basis for a pay-
10 day loan and is drawn on an account with in-
11 sufficient funds.

12 (9) CIVIL ENFORCEMENT.—Provision for civil
13 penalties for violations of the statute with a min-
14 imum civil money penalty of \$1,000 for any violation
15 of the statute by any payday lender.

16 (10) PRIVATE RIGHT OF ACTION.—Provisions
17 that make any person who violates any provision of
18 the statute with respect to any other person liable to
19 such other person, or to a class of such other per-
20 sons, for actual, consequential, and punitive dam-
21 ages, statutory damages of \$1,000 for each violation,
22 and costs and attorney’s fees.

23 (11) CRIMINAL PENALTIES FOR OPERATION OF
24 BUSINESS WITHOUT A LICENSE.—A criminal penalty
25 for anyone, other than a depository institution, mak-

1 ing any payday loan within the State after the effective date of such State statute without a license issued by the State.

4 (12) CRIMINAL PENALTIES FOR OTHER VIOLATIONS OF THE STATUTE.—A provision that any person who knowingly violates any provision of the statute, or any regulation prescribed under the statute, shall be subject to a fine of \$1,000, imprisonment for not to exceed 6 months, or both.

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

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

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

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

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