

109TH CONGRESS  
1ST SESSION

# H. R. 3426

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2005

Mr. GUTIERREZ (for himself, Mr. FRANK of Massachusetts, Ms. LEE, and Mrs. MCCARTHY) 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 Federal savings associations, 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”.

6 **TITLE I—NATIONAL BANKS**

7 **SEC. 101. STATE LAW PREEMPTION STANDARDS FOR NA-**  
8 **TIONAL BANKS CLARIFIED.**

9 (a) IN GENERAL.—Chapter One of title LXII of the  
10 Revised Statutes of the United States (12 U.S.C. 21 et

1 seq.) is amended by inserting after section 5136B the fol-  
 2 lowing new section:

3 **“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NA-**  
 4 **TIONAL BANKS AND SUBSIDIARIES CLARI-**  
 5 **FIED.**

6 “(a) STATE CONSUMER LAWS OF GENERAL APPLI-  
 7 CATION.—

8 “(1) IN GENERAL.—Notwithstanding any other  
 9 provision of Federal law, any consumer protection in  
 10 State consumer law of general application (including  
 11 any law relating to unfair or deceptive acts or prac-  
 12 tices, any consumer fraud law and repossession,  
 13 foreclosure, and collection) shall apply to any na-  
 14 tional bank.

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

19 “(b) STATE LAWS RELATED TO LAWS USED BY NA-  
 20 TIONAL BANKS FOR THEIR BENEFIT.—When a national  
 21 bank avails itself of a State law for its benefit, all related  
 22 consumer protections in State law shall apply.

23 “(c) STATE BANKING LAWS ENACTED PURSUANT TO  
 24 FEDERAL LAW.—

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

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

5                   “(B) was enacted pursuant to or in accord-  
6           ance with, and is not inconsistent with, an Act  
7           of Congress, including the Gramm-Leach-Bliley  
8           Act, the Consumer Credit Protection Act, and  
9           the Real Estate Settlement Procedures Act,  
10          that explicitly or by implication, permits States  
11          to exceed or supplement the requirements of  
12          any comparable Federal law,  
13          shall apply to any national bank.

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

16                   “(A) the State law discriminates against  
17          national banks; or

18                   “(B) State law is inconsistent with provi-  
19          sions of Federal law other than this title LXII,  
20          but only to the extent of the inconsistency (as  
21          determined in accordance with the provision of  
22          the other Federal Law).

23          “(d) STATE LAWS PROTECTING AGAINST PRED-  
24          TORY MORTGAGE LOANS.—To the extent not otherwise  
25          addressed in this section, State laws providing greater pro-

1 tection in high cost mortgage loans, however denominated,  
2 both in coverage and content, than is provided under the  
3 Truth in Lending Act (including the provisions amended  
4 by the Home Ownership and Equity Protection Act of  
5 1994) shall apply to any national bank.

6 “(e) COMPARABLE FEDERAL REGULATION RE-  
7 QUIRED.—In relation to the regulation of consumer credit  
8 and deposit transactions, the Comptroller may preempt  
9 State law pursuant to this title only when there is a com-  
10 parable Federal statute, or regulations pursuant to a Fed-  
11 eral statute other than this title, expressly governing the  
12 activity, except in relation to interest pursuant to section  
13 5197.

14 “(f) NO NEGATIVE IMPLICATIONS FOR APPLICA-  
15 BILITY OF OTHER STATE LAWS.—No provision of this  
16 section shall be construed as altering or affecting the ap-  
17 plicability, to national banks, of any State law which is  
18 not described in this section.

19 “(g) EFFECT OF TRANSFER OF TRANSACTION.—A  
20 transaction that is not entitled to preemption at the time  
21 of the origination of the transaction does not become enti-  
22 tled to preemption under this title by virtue of its subse-  
23 quent acquisition by a national bank.

24 “(h) DENIAL OF PREEMPTION NOT A DEPRIVATION  
25 OF A CIVIL RIGHT.—The preemption of any provision of

1 the law of any State with respect to any national bank  
 2 shall not be treated as a right, privilege, or immunity for  
 3 purposes of section 1979 of the Revised Statutes of the  
 4 United States (42 U.S.C. 1983).

5 “(i) DEFINITION.—For purposes of this section, the  
 6 terms ‘includes’ and ‘including’ have the same meaning  
 7 as in section 3(t) of the Federal Deposit Insurance Act.”.

8 (b) CLERICAL AMENDMENT.—The table of sections  
 9 for chapter One of title LXII of the Revised Statutes of  
 10 the United States is amended by inserting after the item  
 11 relating to section 5136B the following new item:

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

12 **SEC. 102. VISITORIAL STANDARDS.**

13 Section 5136C of the Revised Statutes of the United  
 14 States (as added by section 101(a) of this Act) is amended  
 15 by adding at the end the following new subsections:

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

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

3 “(2) on behalf of residents of such State, to en-  
4 force any applicable provision of any Federal or  
5 State law against a national bank, as authorized by  
6 such law, or to seek relief and recover damages for  
7 such residents from any violation of any such law by  
8 any national bank.

9 “(k) ENFORCEMENT ACTIONS.—The ability of the  
10 Comptroller to bring an enforcement action under this  
11 title or section 5 of the Federal Trade Commission Act  
12 does not preclude private parties from enforcing rights  
13 granted under Federal or State law in the courts.”.

14 **SEC. 103. CLARIFICATION OF LAW APPLICABLE TO STATE-**  
15 **CHARTERED NONDEPOSITORY INSTITUTION**  
16 **SUBSIDIARIES.**

17 Section 5136C of the Revised Statutes of the United  
18 States (as added by section 101(a) of this Act) is amended  
19 by inserting after subsection (k) (as added by section 102)  
20 the following new subsection:

21 “(l) CLARIFICATION OF LAW APPLICABLE TO NON-  
22 DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILI-  
23 ATES OF NATIONAL BANKS; DEFINITIONS.—

24 “(1) IN GENERAL.—No provision of this title  
25 shall be construed as preempting the applicability of

1 State law to any State-chartered nondepository insti-  
 2 tution, subsidiary, other affiliate, or agent of a na-  
 3 tional bank.

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

6 “(A) DEPOSITORY INSTITUTION, SUB-  
 7 SIDIARY, AFFILIATE.—The terms ‘depository in-  
 8 stitution’, ‘subsidiary’, and ‘affiliate’ have the  
 9 same meanings as in section 3 of the Federal  
 10 Deposit Insurance Act.

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

14 **SEC. 104. DATA COLLECTION AND REPORTING.**

15 (a) COLLECTING AND MONITORING CONSUMER COM-  
 16 PLAINTS.—

17 (1) IN GENERAL.—The Comptroller of the Cur-  
 18 rency shall record and monitor each complaint re-  
 19 ceived directly or indirectly from a consumer regard-  
 20 ing a national bank or any subsidiary of a national  
 21 bank and record the resolution of the complaint.

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

1 (A) the date the consumer complaint was  
2 received;

3 (B) the nature of the complaint;

4 (C) when and how the complaint was re-  
5 solved, including a brief description of the ex-  
6 tent, and the results, of the investigation made  
7 by the Comptroller into the complaint, a brief  
8 description of any notices given and inquiries  
9 made to any other Federal or State officer or  
10 agency in the course of the investigation or res-  
11 olution of the complaint, a summary of the en-  
12 forcement action taken upon completion of the  
13 investigation, and a summary of the results of  
14 subsequent periodic reviews by the Comptroller  
15 of the extent and nature of compliance by the  
16 national bank or subsidiary with the enforce-  
17 ment action; and

18 (D) if the complaint involves any alleged  
19 violation of a State law (whether or not Federal  
20 law preempts the application of such State law  
21 to such national bank) by such bank, a cite to  
22 and a description of the State law that formed  
23 the basis of the complaint.

24 (b) REPORT TO THE CONGRESS.—



1           (1) PERIODIC REPORTS REQUIRED.—The  
2           Comptroller of the Currency shall submit a report  
3           semi-annually to the Congress on the consumer pro-  
4           tection efforts of the Office of the Comptroller of the  
5           Currency.

6           (2) CONTENTS OF REPORT.—Each report sub-  
7           mitted under paragraph (1) shall include the fol-  
8           lowing:

9                   (A) The total number of consumer com-  
10                  plaints received by the Comptroller during the  
11                  period covered by the report with respect to al-  
12                  leged violations of consumer protection laws by  
13                  national banks and subsidiaries of national  
14                  banks.

15                  (B) The total number of consumer com-  
16                  plaints received during the reporting period that  
17                  are based on each of the following:

18                          (i) Each title of the Consumer Credit  
19                          Protection Act (reported as a separate ag-  
20                          gregate number for each such title).

21                          (ii) The Truth in Savings Act.

22                          (iii) The Right to Financial Privacy  
23                          Act of 1978.

24                          (iv) The Expedited Funds Availability  
25                          Act.

1 (v) The Community Reinvestment Act  
2 of 1977.

3 (vi) The Bank Protection Act of 1968.

4 (vii) Title LXII of the Revised Stat-  
5 utes of the United States.

6 (viii) The Federal Deposit Insurance  
7 Act.

8 (ix) The Real Estate Settlement Pro-  
9 cedures Act of 1974.

10 (x) The Home Mortgage Disclosure  
11 Act of 1975.

12 (xi) Any other Federal law.

13 (xii) State consumer protection laws  
14 (reported as a separate aggregate number  
15 for each State and each State consumer  
16 protection law).

17 (xiii) Any other State law (reported  
18 separately for each State and each State  
19 law).

20 (C) A summary description of the resolu-  
21 tion efforts by the Comptroller for complaints  
22 received during the period covered, including—

23 (i) the average amount of time to re-  
24 solve each complaint;

1 (ii) the median period of time to re-  
2 solve each complaint;

3 (iii) the average and median time to  
4 resolve complaints in each category of com-  
5 plaints described in each clause of sub-  
6 paragraph (B); and

7 (iv) a summary description of the  
8 longest outstanding complaint during the  
9 reporting period and the reason for the dif-  
10 ficulty in resolving such complaint in a  
11 more timely fashion.

12 (3) DISCLOSURE OF REPORT ON OCC  
13 WEBSITE.—Each report submitted to the Congress  
14 under this subsection shall be posted, by the Comp-  
15 troller of the Currency, in a timely fashion and  
16 maintained on the website of the Office of the  
17 Comptroller of the Currency on the World Wide  
18 Web.

## 19 **TITLE II—SAVINGS** 20 **ASSOCIATIONS**

### 21 **SEC. 201. STATE LAW PREEMPTION STANDARDS FOR FED-** 22 **ERAL SAVINGS ASSOCIATIONS CLARIFIED.**

23 (a) IN GENERAL.—The Home Owners' Loan Act (12  
24 U.S.C. 1461 et seq.) is amended by inserting after section  
25 5 the following new section:

1 **“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FED-**  
2 **ERAL SAVINGS ASSOCIATIONS AND AFFILI-**  
3 **ATES CLARIFIED.**

4 “(a) STATE CONSUMER LAWS OF GENERAL APPLI-  
5 CATION.—Notwithstanding any other provision of Federal  
6 law, any consumer protection in State consumer law of  
7 general application (including any law relating to unfair  
8 or deceptive acts or practices, any consumer fraud law and  
9 repossession, foreclosure, and collection) shall apply to any  
10 Federal savings association.

11 “(b) STATE LAWS RELATED TO LAWS USED BY  
12 FEDERAL SAVINGS ASSOCIATIONS FOR THEIR BEN-  
13 EFIT.—When a Federal savings association avails itself of  
14 a State law for its benefit, all related consumer protections  
15 in State law shall apply.

16 “(c) STATE BANKING OR THRIFT LAWS ENACTED  
17 PURSUANT TO FEDERAL LAW.—

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

21 “(A) is applicable to State savings associa-  
22 tions (as defined in section 3 of the Federal De-  
23 posit Insurance Act); and

24 “(B) was enacted pursuant to or in accord-  
25 ance with, and is not inconsistent with, an Act  
26 of Congress, including the Gramm-Leach-Bliley

1 Act, the Consumer Credit Protection Act, and  
2 the Real Estate Settlement Procedures Act,  
3 that explicitly or by implication, permits States  
4 to exceed or supplement the requirements of  
5 any comparable Federal law,  
6 shall apply to any Federal savings association.

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

9 “(A) the State law discriminates against  
10 Federal savings associations; or

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

16 “(d) STATE LAWS PROTECTING AGAINST PREDATORY MORTGAGE LOANS.—To the extent not otherwise  
17 addressed in this section, State laws providing greater protection in high cost mortgage loans, however denominated,  
18 both in coverage and content, than is provided under the  
19 Truth in Lending Act (including the provisions amended  
20 by the Home Ownership and Equity Protection Act of  
21 1994) shall apply to any Federal savings association.

22 “(e) COMPARABLE FEDERAL REGULATION REQUIRED.—In relation to the regulation of consumer credit

1 and deposit transactions, the Director of the Office of  
 2 Thrift Supervision may preempt State law pursuant to  
 3 this Act only when there is a comparable Federal statute,  
 4 or regulations pursuant to a Federal statute other than  
 5 this Act, expressly governing the activity, except in rela-  
 6 tion to interest pursuant to section 4(g).

7 “(f) NO NEGATIVE IMPLICATIONS FOR APPLICA-  
 8 BILITY OF OTHER STATE LAWS.—No provision of this  
 9 section shall be construed as altering or affecting the ap-  
 10 plicability, to Federal savings associations, of any State  
 11 law which is not described in this section.

12 “(g) EFFECT OF TRANSFER OF TRANSACTION.—A  
 13 transaction that is not entitled to preemption at the time  
 14 of the origination of the transaction does not become enti-  
 15 tled to preemption under this Act by virtue of its subse-  
 16 quent acquisition by a Federal savings association.

17 “(h) DENIAL OF PREEMPTION NOT A DEPRIVATION  
 18 OF A CIVIL RIGHT.—The preemption of any provision of  
 19 the law of any State with respect to any Federal savings  
 20 association shall not be treated as a right, privilege, or  
 21 immunity for purposes of section 1979 of the Revised  
 22 Statutes of the United States (42 U.S.C. 1983).

23 “(i) DEFINITION.—For purposes of this section, the  
 24 terms ‘includes’ and ‘including’ have the same meaning  
 25 as in section 3(t) of the Federal Deposit Insurance Act.”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
 2 for the Home Owners’ Loan Act (12 U.S.C. 1461 et seq.)  
 3 is amended by striking the item relating to section 6 and  
 4 inserting the following new item:

“6. State law preemption standards for Federal savings associations and affiliates clarified.”.

5 **SEC. 202. VISITORIAL STANDARDS.**

6 Section 6 of the Home Owners’ Loan Act (as added  
 7 by section 201(a) of this title) is amended by adding at  
 8 the end the following new subsections:

9 “(j) VISITORIAL POWERS.—No provision of this Act  
 10 shall be construed as limiting or restricting the authority  
 11 of any attorney general (or other chief law enforcement  
 12 officer) of any State to bring any action in any court of  
 13 appropriate jurisdiction—

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

16 “(2) on behalf of residents of such State, to en-  
 17 force any applicable provision of any Federal or  
 18 State law against a Federal savings association, as  
 19 authorized by such law, or to seek relief and recover  
 20 damages for such residents from any violation of any  
 21 such law by any Federal savings association.

22 “(k) ENFORCEMENT ACTIONS.—The ability of the  
 23 Director of the Office of Thrift Supervision to bring an  
 24 enforcement action under this Act or section 5 of the Fed-

1 eral Trade Commission Act does not preclude private par-  
 2 ties from enforcing rights granted under Federal or State  
 3 law in the courts.”.

4 **SEC. 203. CLARIFICATION OF LAW APPLICABLE TO STATE-**  
 5 **CHARTERED NONDEPOSITORY INSTITUTION**  
 6 **SUBSIDIARIES.**

7 Section 6 of the Home Owners’ Loan Act (as added  
 8 by section 201(a) of this title) is amended by inserting  
 9 after subsection (k) (as added by section 202) the fol-  
 10 lowing new subsection:

11 “(1) CLARIFICATION OF LAW APPLICABLE TO NON-  
 12 DEPOSITORY INSTITUTION AFFILIATES OF FEDERAL SAV-  
 13 INGS ASSOCIATIONS.—

14 “(1) IN GENERAL.—No provision of this Act  
 15 shall be construed as preempting the applicability of  
 16 State law to any State-chartered nondepository insti-  
 17 tution, subsidiary, other affiliate, or agent of a Fed-  
 18 eral savings association.

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

21 “(A) DEPOSITORY INSTITUTION, SUB-  
 22 SIDIARY, AFFILIATE.—The terms ‘depository in-  
 23 stitution’, ‘subsidiary’, and ‘affiliate’ have the  
 24 same meanings as in section 3 of the Federal  
 25 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. 204. DATA COLLECTION AND REPORTING.**

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

7           (1) IN GENERAL.—The Director of the Office of  
8   Thrift Supervision shall record and monitor each  
9   complaint received directly or indirectly from a con-  
10   sumer regarding a Federal savings association or  
11   any subsidiary of a Federal savings association and  
12   record the resolution of the complaint.

13           (2) FACTORS TO BE INCLUDED.—In carrying  
14   out the requirements of paragraph (1), the Director  
15   of the Office of Thrift Supervision shall include—

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

18                   (B) the nature of the complaint;

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

1           olution of the complaint, a summary of the en-  
2           forcement action taken upon completion of the  
3           investigation, and a summary of the results of  
4           subsequent periodic reviews by the Comptroller  
5           of the extent and nature of compliance by the  
6           Federal savings association or subsidiary with  
7           the enforcement action; and

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

15       (b) REPORT TO THE CONGRESS.—

16           (1) PERIODIC REPORTS REQUIRED.—The Direc-  
17          tor of the Office of Thrift Supervision shall submit  
18          a report semi-annually to the Congress on the con-  
19          sumer protection efforts of the Office of Thrift Su-  
20          pervision.

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

24           (A) The total number of consumer com-  
25          plaints received by the Director during the pe-

1           riod covered by the report with respect to al-  
2           leged violations of consumer protection laws by  
3           Federal savings associations and subsidiaries of  
4           Federal savings associations.

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

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

11                   (ii) The Truth in Savings Act.

12                   (iii) The Right to Financial Privacy  
13                  Act of 1978.

14                   (iv) The Expedited Funds Availability  
15                  Act.

16                   (v) The Community Reinvestment Act  
17                  of 1977.

18                   (vi) The Bank Protection Act of 1968.

19                   (vii) The Home Owners' Loan Act.

20                   (viii) The Federal Deposit Insurance  
21                  Act.

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

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

1 (xi) Any other Federal law.

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

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

9 (C) A summary description of the resolu-  
10 tion efforts by the Director for complaints re-  
11 ceived during the period covered, including—

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

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

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

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

1           (3)   DISCLOSURE   OF   REPORT   ON   OTS  
2   WEBSITE.—Each report submitted to the Congress  
3   under this subsection shall be posted, by the Direc-  
4   tor of the Office of Thrift Supervision, in a timely  
5   fashion and maintained on the website of the Office  
6   of Thrift Supervision on the World Wide Web.

○