

109TH CONGRESS
2^D SESSION

H. R. 5350

To amend the Federal Deposit Insurance Act and the Truth in Lending Act to prohibit federally insured institutions from engaging in high-cost payday loans, to expand protections for consumers in connection with the making of such loans by uninsured entities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 10, 2006

Mr. UDALL of New Mexico introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Federal Deposit Insurance Act and the Truth in Lending Act to prohibit federally insured institutions from engaging in high-cost payday loans, to expand protections for consumers in connection with the making of such loans by uninsured entities, 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 “Federal Payday Loan
5 Consumer Protection Amendments of 2006”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress makes the following
3 findings:

4 (1) Payday lending is a rapidly expanding form
5 of high-cost, short-term credit that uses a borrower's
6 personal check as collateral and targets individuals
7 with limited access to affordable credit who are in
8 desperate need of cash to meet immediate obliga-
9 tions.

10 (2) Consumer group and regulatory studies in-
11 dicate that the average annual percentage rate on
12 payday loans nationally ranges from 390 percent to
13 780 percent for a 2-week loan and a typical cus-
14 tomer has 8 to 12 loans per year at a single lender.

15 (3) While State law has traditionally prohibited
16 such high cost lending through usury limits, small
17 loan interest caps and other restrictions, these laws
18 have either been revised to exempt payday loan
19 transactions, or payday lenders have affiliated with
20 insured depository institutions to invoke the most fa-
21 vored lender principle under Federal law to cir-
22 cumvent interest rate regulation in State law.

23 (4) Lending that fails to assess borrowers abil-
24 ity to repay, that requires consumers to write checks
25 on insufficient funds, that encourages perpetual debt
26 or default on other obligations, and that facilitates

1 violations of State law, is an unacceptable banking
2 practice for insured depository institutions that
3 threatens the safety of the participating institution
4 and the broader banking system.

5 (b) PURPOSE.—It is the purpose of this Act to en-
6 courage fair lending practices by prohibiting insured de-
7 pository institutions from engaging in any form of payday
8 lending, by restricting the use of personal checks drawn
9 on, or forms of withdrawals from, accounts at insured de-
10 pository institutions for purposes of making payday loans.

11 **SEC. 3. FEDERAL DEPOSIT INSURANCE ACT AMENDMENT.**

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

15 “(x) PROHIBITION ON CERTAIN UNSAFE AND UN-
16 SOUND BANKING PRACTICES.—

17 “(1) IN GENERAL.—An insured depository in-
18 stitution may not—

19 “(A) make any payday loan, either directly
20 or indirectly; or

21 “(B) make any loan to any other lender
22 for purposes of financing a payday loan or refi-
23 nancing or extending any payday loan.

24 “(2) PAYDAY LOAN DEFINED.—For purposes of
25 this subsection, the term ‘payday loan’ means any

1 transaction in which a short-term cash advance is
 2 made to a consumer in exchange for—

3 “(A) a consumer’s personal check or share
 4 draft, in the amount of the advance plus a fee,
 5 where presentment or negotiation of such check
 6 or share draft is deferred by agreement of the
 7 parties until a designated future date; or

8 “(B) a consumer’s authorization to debit
 9 the consumer’s transaction account, in the
 10 amount of the advance plus a fee, where such
 11 account will be debited on or after a designated
 12 future date.”.

13 **SEC. 4. PROHIBITION ON CERTAIN UNSAFE AND UNSOUND**
 14 **LENDING PRACTICES.**

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

18 “(e) PROHIBITION ON PAYDAY LOANS BASED ON
 19 CHECKS DRAWN ON, OR AUTHORIZED WITHDRAWALS
 20 FROM, INSURED DEPOSITORY INSTITUTIONS.—

21 “(1) IN GENERAL.—A creditor may not make a
 22 payday loan to any person if the creditor knows or
 23 has reasonable cause to believe that—

24 “(A) the personal check or share draft the
 25 creditor receives from the person, in exchange

1 for the loan, is drawn on an insured depository
2 institution or insured credit union; or

3 “(B) the account the creditor receives per-
4 mission from the person to debit, in exchange
5 for the loan, is a transaction account or share
6 draft account at an insured depository institu-
7 tion or an insured credit union.

8 “(2) DEFINITIONS.—For purposes of this sub-
9 section, the following definitions shall apply:

10 “(A) INSURED CREDIT UNION.—The term
11 ‘insured credit union’ has the meaning given
12 the term in section 101 of the Federal Credit
13 Union Act.

14 “(B) INSURED DEPOSITORY INSTITU-
15 TION.—The term ‘insured depository institu-
16 tion’ has the meaning given the term in section
17 3 of the Federal Deposit Insurance Act.

18 “(C) PAYDAY LOAN DEFINED.—The term
19 ‘payday loan’ means any transaction in which a
20 short-term cash advance is made to a consumer
21 in exchange for—

22 “(i) a consumer’s personal check or
23 share draft, in the amount of the advance
24 plus a fee, where presentment or negotia-
25 tion of such check or share draft is de-

1 ferred by agreement of the parties until a
2 designated future date; or

3 “(ii) a consumer’s authorization to
4 debit the consumer’s transaction or share
5 draft account, in the amount of the ad-
6 vance plus a fee, where such account will
7 be debited on or after a designated future
8 date.”.

9 (b) CLARIFICATION OF LIABILITY.—Section 130(a)
10 of the Truth in Lending Act (15 U.S.C. 1640(a)) is
11 amended by inserting after the penultimate sentence the
12 following new sentence: “Any creditor who violates section
13 128(e) with respect to any person shall be liable to such
14 person under paragraphs (1), (2) and (3).”.

15 (c) FEDERAL RESERVE BOARD STUDY OF ADVER-
16 TISING AND WARNING LABELS FOR HIGH-INTEREST
17 LOANS.—

18 (1) STUDY REQUIRED.—The Board of Gov-
19 ernors of the Federal Reserve System shall conduct
20 a study to determine the most effective way to re-
21 quire—

22 (A) advertising of the finance charge and the
23 annual percentage rate; and

24 (B) the inclusion of a high-interest warning
25 label,

1 on all applications and contracts for credit (as de-
2 fined in section 103 of the Truth in Lending Act)
3 bearing interest at an annual percentage rate in ex-
4 cess of 36 percent.

5 (2) REPORT TO THE CONGRESS.—The Board of
6 Governors of the Federal Reserve System shall sub-
7 mit a report to the Congress before the end of the
8 6-month period beginning on the date of the enact-
9 ment of this Act containing the findings and conclu-
10 sions of the Board with respect to the study required
11 under subsection (a), together with such rec-
12 ommendations for legislative or administrative action
13 as the Board may determines to be appropriate.

14 **SEC. 5. EFFECTIVE DATE.**

15 The requirements of this Act and the amendments
16 made by this Act shall take effect at the end of the 90-
17 day period beginning on the date of the enactment of this
18 Act and shall apply to payday loans initiated on or after
19 such date and to an extension or renewal of a payday loan
20 made on or after such date.

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