

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1608

To amend the Truth in Lending Act to establish a national usury rate for consumer credit transactions, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 2009

Ms. SPEIER (for herself and Mr. DELAHUNT) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To amend the Truth in Lending Act to establish a national usury rate for consumer credit transactions, 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 “Protecting Consumers  
5 from Unreasonable Credit Rates Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

8 (1) Attempts have been made to prohibit usu-  
9 rious interest rates in America since colonial times.

1           (2) At the State level, 15 States and the Dis-  
2           trict of Columbia have enacted broadly applicable  
3           usury laws that protect borrowers from high-cost  
4           payday loans and many other forms of credit, while  
5           34 States and the District of Columbia have limited  
6           annual interest rates to 36 percent or less for 1 or  
7           more types of consumer credit.

8           (3) At the Federal level, in 2006, the Congress  
9           enacted a Federal 36 percent annualized usury cap  
10          for service members and their families for covered  
11          credit products, as defined by the Department of  
12          Defense, which curbed payday, car title, and tax re-  
13          fund lending around military bases.

14          (4) Notwithstanding such attempts to curb  
15          predatory lending, high-cost lending persists in all  
16          50 States due to loopholes in State laws, safe harbor  
17          laws for specific forms of credit, and the exportation  
18          of unregulated interest rates permitted by preemp-  
19          tion.

20          (5) Due to the lack of a comprehensive Federal  
21          usury cap, consumers annually pay approximately  
22          \$17,500,000,000 for high-cost overdraft loans, as  
23          much as \$8,600,000,000 for storefront and online  
24          payday loans, and nearly \$900,000,000 for tax re-  
25          fund anticipation loans.

1           (6) Cash-strapped consumers pay on average  
2           400 percent annual interest for payday loans, 300  
3           percent annual interest for car title loans, up to  
4           3,500 percent for bank overdraft loans, 50 to 500  
5           percent annual interest for loans secured by ex-  
6           pected tax refunds, and higher than 50 percent an-  
7           nual percentage interest for credit cards that charge  
8           junk fees.

9           (7) A national maximum interest rate that in-  
10          cludes all forms of fees and closes all loopholes is  
11          necessary to eliminate such predatory lending.

12          (8) Alternatives to predatory lending that en-  
13          courage small dollar loans with minimal or no fees,  
14          installment payment schedules, and affordable re-  
15          payment periods should be encouraged.

16 **SEC. 3. NATIONAL MAXIMUM INTEREST RATE.**

17          (a) IN GENERAL.—Chapter 2 of the Truth in Lend-  
18          ing Act (15 U.S.C. 1631 et seq.) is amended by adding  
19          at the end the following new section:

20 **“SEC. 140A. MAXIMUM RATES OF INTEREST.**

21          “(a) IN GENERAL.—Notwithstanding any other pro-  
22          vision of law, no creditor may extend of credit to a con-  
23          sumer for which the fee and interest rate, as defined in  
24          subsection (b), exceeds 36 percent.

25          “(b) FEE AND INTEREST RATE DEFINED.—

1           “(1) IN GENERAL.—For purposes of this sec-  
2           tion, the term ‘fee and interest rate’ includes all  
3           charges payable, directly or indirectly, incident to,  
4           ancillary to, or as a condition of the extension of  
5           credit, including—

6                   “(A) any payment compensating a creditor  
7                   or prospective creditor for—

8                           “(i) an extension of credit or making  
9                           available a line of credit, such as fees con-  
10                           nected with credit extension or availability  
11                           such as numerical periodic rates, annual  
12                           fees, cash advance fees, and membership  
13                           fees; or

14                           “(ii) any fees for default or breach by  
15                           a borrower of a condition upon which cred-  
16                           it was extended, such as late fees, creditor-  
17                           imposed not sufficient funds fees charged  
18                           when a borrower tenders payment on a  
19                           debt with a check drawn on insufficient  
20                           funds, overdraft fees, and over limit fees;

21                   “(B) all fees which constitute a finance  
22                   charge, as defined by rules of the Board in ac-  
23                   cordance with this title;

24                   “(C) credit insurance premiums, whether  
25                   optional or required; and

1           “(D) all charges and costs for ancillary  
2 products sold in connection with or incidental to  
3 the credit transaction.

4           “(2) TOLERANCES.—

5           “(A) IN GENERAL.—With respect to a  
6 credit obligation that is payable in at least 3  
7 fully amortizing installments over at least 90  
8 days, the term ‘fee and interest rate’ does not  
9 include—

10           “(i) application or participation fees  
11 that in total do not exceed the greater of  
12 \$30 or, if there is a limit to the credit line,  
13 5 percent of the credit limit, up to \$120,  
14 if—

15           “(I) such fees are excludable  
16 from the finance charge pursuant to  
17 section 106 and regulations issued  
18 under such section;

19           “(II) such fees cover all credit  
20 extended or renewed by the creditor  
21 for 12 months; and

22           “(III) the minimum amount of  
23 credit extended or available on a cred-  
24 it line is equal to \$300 or more;

1           “(ii) a late fee charged as authorized  
2           by State law and by the agreement that  
3           does not exceed either \$20 per late pay-  
4           ment or \$20 per month; or

5           “(iii) a creditor-imposed not sufficient  
6           funds fee charged when a borrower tenders  
7           payment on a debt with a check drawn on  
8           insufficient funds that does not exceed  
9           \$15.

10          “(B) ADJUSTMENTS FOR INFLATION.—

11          The Board may adjust the amounts of the tol-  
12          erances established under this paragraph for in-  
13          flation over time, consistent with the primary  
14          goals of protecting consumers and ensuring  
15          that the 25 percent fee and interest rate limita-  
16          tion is not circumvented.

17          “(c) CALCULATIONS.—

18          “(1) OPEN END CREDIT PLANS.—For an open  
19          end consumer credit plan—

20                 “(A) the fee and interest rate shall be cal-  
21                 culated each month, based upon the sum of all  
22                 fees and finance charges described in subsection  
23                 (b) charged by the creditor during the pre-  
24                 ceding 1-year period, divided by the average  
25                 daily balance; and

1           “(B) if the credit account has been open  
2           less than 1 year, the fee and interest rate shall  
3           be calculated based upon the total of all fees  
4           and finance charges described in subsection  
5           (b)(1) charged by the creditor since the plan  
6           was opened, divided by the average daily bal-  
7           ance, and multiplied by the quotient of 12 di-  
8           vided by the number of full months that the  
9           credit plan has been in existence.

10           “(2) OTHER CREDIT PLANS.—For purposes of  
11           this section, in calculating the fee and interest rate,  
12           the Board shall require the method of calculation of  
13           annual percentage rate specified in section  
14           107(a)(1), except that the amount referred to in  
15           that section 107(a)(1) as the ‘finance charge’ shall  
16           include all fees, charges, and payments described in  
17           subsection (b)(1).

18           “(3) ADJUSTMENTS AUTHORIZED.—The Board  
19           may make adjustments to the calculations in para-  
20           graphs (1) and (2), but the primary goals of such  
21           adjustment shall be to protect consumers and to en-  
22           sure that the 25 percent fee and interest rate limita-  
23           tion is not circumvented.

24           “(d) DEFINITION OF CREDITOR.—As used in this  
25           section, the term ‘creditor’ has the same meaning as in

1 section 702(e) of the Equal Credit Opportunity Act and  
2 the definition in section 103 shall not apply.

3 “(e) NO EXEMPTIONS PERMITTED.—The exemption  
4 authority of the Board under section 105 shall not apply  
5 to the rates established under this section or the disclosure  
6 requirements under section 127(b)(6).

7 “(f) DISCLOSURE OF FEE AND INTEREST RATE FOR  
8 CREDIT OTHER THAN OPEN END CREDIT PLANS.—In  
9 addition to the disclosure requirements under section  
10 127(b)(6), the Board may prescribe regulations requiring  
11 disclosure of the fee and interest rate established under  
12 this section in addition to or instead of annual percentage  
13 rate disclosures otherwise required under this title.

14 “(g) RELATION TO STATE LAW.—No of this section  
15 may be construed as preempting any provision of State  
16 law that provides greater protection to consumers than is  
17 provided in this section.

18 “(h) CIVIL LIABILITY AND ENFORCEMENT.—

19 “(1) IN GENERAL.—In addition to remedies  
20 available to the consumer under section 130(a)—

21 “(A) any payment compensating a creditor  
22 or prospective creditor, to the extent that such  
23 payment is a transaction made in violation of  
24 this section, shall be null and void, and not en-

1 forceable by any party in any court or alter-  
2 native dispute resolution forum; and

3 “(B) the creditor or any subsequent holder  
4 of the obligation shall promptly return to the  
5 consumer any principal, interest, charges, and  
6 fees, and any security interest associated with  
7 such transaction.

8 “(2) DEFENSE TO ACTION.—Notwithstanding  
9 any statute of limitations or repose, a violation of  
10 this section may be raised as a matter of defense by  
11 recoupment or setoff to an action to collect any debt  
12 resulting from a transaction made in violation of  
13 this section or to repossess related security at any  
14 time.

15 “(i) VIOLATIONS.—Any person that violates this sec-  
16 tion, or seeks to enforce an agreement made in violation  
17 of this section, shall be subject to, for each such violation,  
18 1 year in prison, or a fine in an amount equal to the great-  
19 er of—

20 “(1) 3 times the amount of the total accrued  
21 debt associated with the subject transaction; or

22 “(2) \$50,000,  
23 or both.

24 “(j) STATE ATTORNEYS GENERAL.—An action to en-  
25 force this section may be brought by the appropriate State

1 attorney general in any United States district court or any  
2 other court of competent jurisdiction within 3 years from  
3 the date of the violation, and such attorney general may  
4 obtain injunctive relief.”.

5 (b) CLERICAL AMENDMENT.—The table of sections  
6 for chapter 2 of the Truth in Lending Act is amended  
7 by inserting after the item relating to section 140 the fol-  
8 lowing new item:

“140A. Maximum rates of interest.”.

9 **SEC. 4. DISCLOSURE OF FEE AND INTEREST RATE FOR**  
10 **OPEN END CREDIT PLANS.**

11 Section 127(b)(6) of the Truth in Lending Act (15  
12 U.S.C. 1637(b)(6)) is amended by striking “the total fi-  
13 nance charge expressed” and all that follows through the  
14 end of the paragraph and inserting “the fee and interest  
15 rate, displayed as ‘FAIR’, established in accordance with  
16 section 140A.”.

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