

111TH CONGRESS  
1ST SESSION

# H. R. 3457

To amend the Truth in Lending Act to provide coverage under such Act for credit cards issued to small businesses, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2009

Mr. ABERCROMBIE (for himself, Mrs. LOWEY, Mr. MICHAUD, and Mr. PERRIELLO) 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 provide coverage under such Act for credit cards issued to small businesses, 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; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Small Business Credit Card Act of 2009”.

6 (b) FINDINGS.—The Congress finds as follows:

7 (1) In past recessions, economic recovery has  
8 frequently been led by the creation of millions of  
9 new, small businesses.

1           (2) Today, however, small business owners are  
2           severely limited in their ability to finance new busi-  
3           ness ventures because their access to capital through  
4           their usual resources has dried up, and the lack of  
5           access continues to grow.

6           (3) Small businesses are being pushed into  
7           using credit cards as their primary source of work-  
8           ing capital.

9           (4) This use of credit card credit is especially  
10          true for rapidly growing businesses that are not tra-  
11          ditional brick and mortar operations, and lack the  
12          assets necessary for a traditional loan.

13          (5) Yet, 28 percent of businesses surveyed re-  
14          cently said they had been subject to a decrease in  
15          their line of credit or a credit card limit in the past  
16          6 months.

17          (6) And, this decrease in credit card limits oc-  
18          curred despite the fact that 69 percent of the small  
19          businesses in the survey cited worsening credit card  
20          terms.

21          (7) In 2008, 44 percent of the small businesses  
22          surveyed used credit cards to finance their business.

23          (8) In 1993, only 16 percent of small busi-  
24          nesses used credit cards as a source of financing.

1           (9) One-third of small businesses using credit  
2       cards carry a monthly balance in excess of \$10,000.

3 **SEC. 2. EXTENDING CREDIT CARD PROTECTIONS UNDER**  
4                   **THE TRUTH IN LENDING ACT TO SMALL BUSI-**  
5                   **NESSES.**

6       (a) DEFINITION OF CONSUMER.—Section 103(h) of  
7 the Truth in Lending Act (15 U.S.C. 1602(h)) is amend-  
8 ed—

9           (1) by striking “(h) The adjective ‘consumer’,  
10       used with reference to a credit transaction, charac-  
11       terizes the transaction as one in which the party to  
12       whom credit is offered or extended is” and inserting  
13       “(h) CONSUMER.—

14           “(1) IN GENERAL.—Except as provided in para-  
15       graph (2), the term ‘consumer’, when used as a ad-  
16       jective to describe or modify a credit transaction or  
17       credit plan, means a transaction or credit plan under  
18       which credit is offered or extended to”; and

19       (2) by adding at the end the following new  
20       paragraph:

21           “(2) SMALL BUSINESS INCLUDED UNDER CER-  
22       TAIN CIRCUMSTANCES.—

23           “(A) IN GENERAL.—For purposes of any  
24       provision of this title relating to a credit card  
25       account under an open end credit plan, the

1 term ‘consumer’ includes any qualified small  
2 business.

3 “(B) QUALIFIED SMALL BUSINESS.—For  
4 purposes of subparagraph (A), the term ‘quali-  
5 fied small business’ means, with respect to any  
6 credit card account under an open end credit  
7 plan, any business concern having 50 or fewer  
8 employees, whether or not—

9 “(i) the credit card account is in the  
10 name of an individual or a business entity;  
11 and

12 “(ii) any credit transaction involving  
13 such account is for business or personal  
14 purposes.

15 “(C) EXCLUSION OF SMALL BUSINESS  
16 AFTER ‘OPT OUT’ EFFECTIVE DATE.—The term  
17 ‘qualified small business’ shall not include any  
18 business concern described in subparagraph (A)  
19 after the effective date of any election under  
20 section 135(b) by the individual or business for  
21 which the credit card account referred to in  
22 such subparagraph has been established, so  
23 long as such election remains in effect.”.

24 (b) AMENDMENTS TO EXEMPTIONS.—Section 104 of  
25 the Truth in Lending Act (15 U.S.C. 1603) is amended—

1 (1) in paragraph (1)—

2 (A) by inserting “other than a credit  
3 transaction under an open end consumer credit  
4 plan in which the consumer is a qualified small  
5 business” after “agricultural purposes”; and

6 (B) by inserting “other than qualified  
7 small businesses” after “organizations”; and

8 (2) in paragraph (3), by striking “\$25,000”  
9 and inserting “\$50,000”.

10 (c) BUSINESS CREDIT CARD AMENDMENTS.—Sec-  
11 tion 135 of the Truth in Lending Act (15 U.S.C. 1645)  
12 is amended—

13 (1) by striking “The exemption provided by”  
14 and inserting “(a) IN GENERAL.—The exemption  
15 provided by”; and

16 (2) by adding at the end the following new sub-  
17 section:

18 “(b) QUALIFIED SMALL BUSINESS OPT OUT FROM  
19 COVERAGE.—

20 “(1) NOTICE OF COVERAGE.—The disclosures  
21 under section 127(a) before opening a credit card  
22 account under an open end credit plan for a quali-  
23 fied small business shall include a clear and con-  
24 spicuous disclosure—

1           “(A) that the qualified small business is  
2           treated as a consumer under this title and is  
3           subject to the requirements of this title as a  
4           consumer;

5           “(B) that the business may elect, in ac-  
6           cordance with this subsection, to be exempt,  
7           under section 104(1), from this title to the  
8           same extent as any business other than a quali-  
9           fied small business; and

10           “(C) of the procedures for making the elec-  
11           tion and for subsequently revoking any such  
12           election.

13           “(2) ELECTION.—The Board shall prescribe  
14           procedures for making an effective election under  
15           this subsection and for revoking any such election.

16           “(3) PROHIBITION ON DISCRIMINATION  
17           AGAINST QUALIFIED SMALL BUSINESS.—No creditor  
18           may—

19           “(A) discriminate against any business  
20           concern having 50 or fewer employees in con-  
21           nection with any credit card account of, or any  
22           application for a credit card account by such  
23           business, under an open end credit plan on any  
24           basis; or

1           “(B) require any qualified small business  
2           to make an election under this subsection as a  
3           condition for opening a credit card account, or  
4           for providing more advantageous terms for any  
5           credit card account, under an open end credit  
6           plan.”.

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