

111TH CONGRESS
2D SESSION

S. 3245

To establish rules for small denomination, short-term, unsecured cash advances, such as “payday loans”.

IN THE SENATE OF THE UNITED STATES

APRIL 22, 2010

Mrs. HAGAN (for herself, Mr. DURBIN, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To establish rules for small denomination, short-term, unsecured cash advances, such as “payday loans”.

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 “Payday Lending Limi-
5 tation Act of 2010”.

6 **SEC. 2. REGULATION OF COVERED LOANS.**

7 Section 128 of the Truth in Lending Act (15 U.S.C.
8 1638) is amended by adding at the end the following:

9 “(e) TERMS AND CONDITIONS FOR COVERED
10 LOANS.—

1 “(1) DEFINITIONS.—As used in this sub-
2 section—

3 “(A) the term ‘covered’ loan—

4 “(i) means a consumer credit trans-
5 action in which the loan amount, or, in the
6 case of a line of credit, the credit limit, is
7 \$3,000 or less that—

8 “(I) in the case of a closed-end
9 credit transaction, has a term of 91
10 days or less and an annual percentage
11 rate exceeding 36 percent (include all
12 cost elements (other than the min-
13 imum deposit amount necessary to
14 open a secured card account) associ-
15 ated with the extension of credit, in-
16 cluding fees, service charges, renewal
17 charges, credit insurance premiums,
18 and any other charge or premium
19 with respect to the extension of con-
20 sumer credit);

21 “(II) in the case of an open-end
22 credit transaction, has an amortiza-
23 tion period of 91 days or less and the
24 annual percentage rate exceeds 36
25 percent (calculated as though the

1 transaction were a closed-end trans-
2 action pursuant to subclause (I)); or

3 “(III) in the case of an open-end
4 credit transaction, the cost elements
5 associated with the extension of credit
6 and due in the first 91 days, including
7 finance charges, fees, service charges,
8 renewals, credit insurance premiums,
9 and any other charge or premium
10 with respect to consumer credit, ex-
11 ceed 25 percent of the line of credit;
12 and

13 “(ii) does not include—

14 “(I) a credit transaction that is
15 secured by an interest in real estate,
16 a vehicle, or other goods both listed
17 and valued individually over \$3,000;

18 “(II) overdraft services that are
19 not covered by this title; or

20 “(III) an extension of credit in
21 which a consumer sells an item of
22 goods to a pawn-broker creditor and
23 retains the right to redeem the item
24 for a greater sum within a specified
25 time, provided that the consumer has

1 no obligation to repay the credit, and
 2 the creditor takes no security other
 3 than the goods and makes no effort to
 4 collect the credit; and

5 “(B) the term ‘extended payment plan’
 6 means an amendment to the covered loan that
 7 is signed in person or electronically by both the
 8 consumer and the creditor reflecting an agree-
 9 ment that the consumer pay the outstanding
 10 balance on a covered loan in not fewer than 4
 11 equal payments, where the period between each
 12 payment may not be less than the duration of
 13 the original covered loan.

14 “(2) LIMITS ON BORROWER INDEBTEDNESS.—
 15 Notwithstanding any other provision of law, no cov-
 16 ered loan may be extended to any individual, if such
 17 individual, considering all covered loans by the con-
 18 sumer during such time period, in the aggregate,
 19 has had—

20 “(A) 6 covered loans extended during the
 21 preceding 12-month period; or

22 “(B) covered loan obligations of 90 days or
 23 longer during the preceding 12-month period.

24 “(3) BOARD RULEMAKING REQUIRED.—Not
 25 later than 180 days after the date of enactment of

1 this subsection, the Board shall issue final rules with
2 respect to covered loans, which rules shall—

3 “(A) require each issuer of a covered
4 loan—

5 “(i) to offer extended repayment
6 plans, if the borrower is unable to pay
7 under the terms of the original loan;

8 “(ii) to accept equal payments over a
9 series of pay checks or pay periods of the
10 consumer;

11 “(iii) to obtain a surety bond, in such
12 amounts as the Board determines appro-
13 priate; and

14 “(iv) to comply with appropriate li-
15 censing requirements established by the
16 Board;

17 “(B) create a mechanism for lenders to de-
18 termine whether a potential borrower is eligible
19 for a covered loan;

20 “(C) provide for enforcement by State at-
21 torneys general;

22 “(D) prohibit the purchase or sale, at the
23 same location at which covered loans are of-
24 fered, of other products or services; and

1 “(E) prohibit the imposition of any fee or
 2 penalty for the early repayment of the obliga-
 3 tion, including under any extension described in
 4 subparagraph (A)(i).

5 “(4) NONENFORCEABILITY OF CONTRACTS.—
 6 No contract made in violation of this Act may be en-
 7 forced with respect to any consumer.

8 “(5) OTHER FEES.—The Board may impose
 9 such fees on issuers of covered loans under this sub-
 10 section as may be necessary to pay the administra-
 11 tive costs of the Board in carrying out and enforcing
 12 this subsection.

13 “(6) TREATMENT OF STATE LAW.—Nothing in
 14 this subsection may be construed as—

15 “(A) preempting any provision of State
 16 law, to the extent that such State law provides
 17 greater protection to consumers than is pro-
 18 vided under this subsection;

19 “(B) preventing any State from enacting
 20 any provision of law that provides greater pro-
 21 tection to consumers than is provided under
 22 this subsection;

23 “(C) authorizing covered loans to be made
 24 in a State where they are otherwise not per-
 25 mitted under State law; or

1 “(D) authorizing an extension of credit at
2 an annual percentage rate that would be pro-
3 hibited by applicable State law.”.

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