

112TH CONGRESS
2D SESSION

S. 3452

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

IN THE SENATE OF THE UNITED STATES

JULY 26, 2012

Mr. DURBIN (for himself, Mrs. BOXER, Mr. MERKLEY, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

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

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 2012”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

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

1 (2) at the Federal level, in 2006, Congress en-
2 acted a Federal 36-percent annualized usury cap for
3 service members and their families for covered credit
4 products, as defined by the Department of Defense,
5 which curbed payday, car title, and tax refund lend-
6 ing around military bases;

7 (3) notwithstanding such attempts to curb
8 predatory lending, high-cost lending persists in all
9 50 States due to loopholes in State laws, safe harbor
10 laws for specific forms of credit, and the exportation
11 of unregulated interest rates permitted by preemp-
12 tion;

13 (4) due to the lack of a comprehensive Federal
14 usury cap, consumers annually pay approximately
15 \$23,700,000,000 for high-cost overdraft loans, as
16 much as \$8,100,000,000 for storefront and online
17 payday loans, and additional amounts in unreported
18 revenues from bank direct deposit advance loans and
19 high-cost online installment loans;

20 (5) cash-strapped consumers pay on average
21 400 percent annual interest for payday loans, 300
22 percent annual interest for car title loans, up to
23 3,500 percent for bank overdraft loans, and triple-
24 digit rates for online installment loans;

1 (6) a national maximum interest rate that in-
 2 cludes all forms of fees and closes all loopholes is
 3 necessary to eliminate such predatory lending; and

4 (7) alternatives to predatory lending that en-
 5 courage small dollar loans with minimal or no fees,
 6 installment payment schedules, and affordable re-
 7 payment periods should be encouraged.

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

9 The Truth in Lending Act (15 U.S.C. 1601 et seq.)
 10 is amended by adding at the end the following:

11 **“SEC. 141. MAXIMUM RATES OF INTEREST.**

12 “(a) IN GENERAL.—Notwithstanding any other pro-
 13 vision of law, no creditor may make an extension of credit
 14 to a consumer with respect to which the fee and interest
 15 rate, as defined in subsection (b), exceeds 36 percent.

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

17 “(1) IN GENERAL.—For purposes of this sec-
 18 tion, the fee and interest rate includes all charges
 19 payable, directly or indirectly, incident to, ancillary
 20 to, or as a condition of the extension of credit, in-
 21 cluding—

22 “(A) any payment compensating a creditor
 23 or prospective creditor for—

24 “(i) an extension of credit or making
 25 available a line of credit, such as fees con-

1 nected with credit extension or availability
 2 such as numerical periodic rates, annual
 3 fees, cash advance fees, and membership
 4 fees; or

5 “(ii) any fees for default or breach by
 6 a borrower of a condition upon which cred-
 7 it was extended, such as late fees, creditor-
 8 imposed not sufficient funds fees charged
 9 when a borrower tenders payment on a
 10 debt with a check drawn on insufficient
 11 funds, overdraft fees, and over limit fees;

12 “(B) all fees which constitute a finance
 13 charge, as defined by rules of the Bureau in ac-
 14 cordance with this title;

15 “(C) credit insurance premiums, whether
 16 optional or required; and

17 “(D) all charges and costs for ancillary
 18 products sold in connection with or incidental to
 19 the credit transaction.

20 “(2) TOLERANCES.—

21 “(A) IN GENERAL.—With respect to a
 22 credit obligation that is payable in at least 3
 23 fully amortizing installments over at least 90
 24 days, the term ‘fee and interest rate’ does not
 25 include—

1 “(i) application or participation fees
2 that in total do not exceed the greater of
3 \$30 or, if there is a limit to the credit line,
4 5 percent of the credit limit, up to \$120,
5 if—

6 “(I) such fees are excludable
7 from the finance charge pursuant to
8 section 106 and regulations issued
9 thereunder;

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

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

16 “(ii) a late fee charged as authorized
17 by State law and by the agreement that
18 does not exceed either \$20 per late pay-
19 ment or \$20 per month; or

20 “(iii) a creditor-imposed not sufficient
21 funds fee charged when a borrower tenders
22 payment on a debt with a check drawn on
23 insufficient funds that does not exceed
24 \$15.

1 “(B) ADJUSTMENTS FOR INFLATION.—

2 The Bureau may adjust the amounts of the tol-
 3 erances established under this paragraph for in-
 4 flation over time, consistent with the primary
 5 goals of protecting consumers and ensuring
 6 that the 36-percent fee and interest rate limita-
 7 tion is not circumvented.

8 “(c) CALCULATIONS.—

9 “(1) OPEN END CREDIT PLANS.—For an open
 10 end credit plan—

11 “(A) the fee and interest rate shall be cal-
 12 culated each month, based upon the sum of all
 13 fees and finance charges described in subsection
 14 (b) charged by the creditor during the pre-
 15 ceding 1-year period, divided by the average
 16 daily balance; and

17 “(B) if the credit account has been open
 18 less than 1 year, the fee and interest rate shall
 19 be calculated based upon the total of all fees
 20 and finance charges described in subsection
 21 (b)(1) charged by the creditor since the plan
 22 was opened, divided by the average daily bal-
 23 ance, and multiplied by the quotient of 12 di-
 24 vided by the number of full months that the
 25 credit plan has been in existence.

1 “(2) OTHER CREDIT PLANS.—For purposes of
 2 this section, in calculating the fee and interest rate,
 3 the Bureau shall require the method of calculation
 4 of annual percentage rate specified in section
 5 107(a)(1), except that the amount referred to in
 6 that section 107(a)(1) as the ‘finance charge’ shall
 7 include all fees, charges, and payments described in
 8 subsection (b)(1) of this section.

9 “(3) ADJUSTMENTS AUTHORIZED.—The Bu-
 10 reau may make adjustments to the calculations in
 11 paragraphs (1) and (2), but the primary goals of
 12 such adjustment shall be to protect consumers and
 13 to ensure that the 36-percent fee and interest rate
 14 limitation is not circumvented.

15 “(d) DEFINITION OF CREDITOR.—As used in this
 16 section, the term ‘creditor’ has the same meaning as in
 17 section 702(e) of the Equal Credit Opportunity Act (15
 18 U.S.C. 1691a(e)).

19 “(e) NO EXEMPTIONS PERMITTED.—The exemption
 20 authority of the Bureau under section 105 shall not apply
 21 to the rates established under this section or the disclosure
 22 requirements under section 127(b)(6).

23 “(f) DISCLOSURE OF FEE AND INTEREST RATE FOR
 24 CREDIT OTHER THAN OPEN END CREDIT PLANS.—In
 25 addition to the disclosure requirements under section

1 127(b)(6), the Bureau may prescribe regulations requiring
2 disclosure of the fee and interest rate established under
3 this section.

4 “(g) RELATION TO STATE LAW.—Nothing in this
5 section may be construed to preempt any provision of
6 State law that provides greater protection to consumers
7 than is provided in this section.

8 “(h) CIVIL LIABILITY AND ENFORCEMENT.—In addi-
9 tion to remedies available to the consumer under section
10 130(a), any payment compensating a creditor or prospec-
11 tive creditor, to the extent that such payment is a trans-
12 action made in violation of this section, shall be null and
13 void, and not enforceable by any party in any court or
14 alternative dispute resolution forum, and the creditor or
15 any subsequent holder of the obligation shall promptly re-
16 turn to the consumer any principal, interest, charges, and
17 fees, and any security interest associated with such trans-
18 action. Notwithstanding any statute of limitations or
19 repose, a violation of this section may be raised as a mat-
20 ter of defense by recoupment or setoff to an action to col-
21 lect such debt or repossess related security at any time.

22 “(i) VIOLATIONS.—Any person that violates this sec-
23 tion, or seeks to enforce an agreement made in violation
24 of this section, shall be subject to, for each such violation,

1 1 year in prison and a fine in an amount equal to the
 2 greater of—

3 “(1) 3 times the amount of the total accrued
 4 debt associated with the subject transaction; or
 5 “(2) \$50,000.

6 “(j) STATE ATTORNEYS GENERAL.—An action to en-
 7 force this section may be brought by the appropriate State
 8 attorney general in any United States district court or any
 9 other court of competent jurisdiction within 3 years from
 10 the date of the violation, and such attorney general may
 11 obtain injunctive relief.”.

12 **SEC. 4. DISCLOSURE OF FEE AND INTEREST RATE FOR**
 13 **OPEN END CREDIT PLANS.**

14 Section 127(b)(6) of the Truth in Lending Act (15
 15 U.S.C. 1637(b)(6)) is amended by striking “the total fi-
 16 nance charge expressed” and all that follows through the
 17 end of the paragraph and inserting “the fee and interest
 18 rate, displayed as ‘FAIR’, established under section 141.”.

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