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114TH CONGRESS
2D SESSION

H. R. 4737

To protect State and Tribal sovereignty from unwarranted infringement by an independent agency of the Federal Government by requiring the Bureau of Consumer Financial Protection to justify certain proposals to preempt State and Tribal law, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 14, 2016

Mr. MULVANEY introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To protect State and Tribal sovereignty from unwarranted infringement by an independent agency of the Federal Government by requiring the Bureau of Consumer Financial Protection to justify certain proposals to preempt State and Tribal law, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''State and Tribal Government Sovereignty Protection Act of 2016''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The people of the States created the national government when they delegated to it those enumerated governmental powers relating to matters beyond the competence of the individual States. All other sovereign powers, save those expressly prohibited the States by the Constitution, are reserved to the States or the people.

(2) In most areas of governmental concern, the States uniquely possess the constitutional authority, the resources, and the competence to discern the sentiments of the people and to govern accordingly.

(3) Our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to their own conditions, needs, and desires. Individual States and communities are free to experiment with a variety of approaches to public issues. One-size-fits-all approaches to public policy problems can inhibit the creation of effective solutions to problems.

(4) Federal action limiting the policymaking discretion of the States should be taken only where constitutional and statutory authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope.

(5) Federal agencies must recognize the distinction between problems of national scope (which may justify Federal action) and problems that are merely common to the States (which will not justify Federal action because individual States, acting individually or together, can effectively deal with them).

(6) On March 26, 2015, the Bureau of Consumer Financial Protection released an outline of proposals under consideration for potential rulemakings for ‘‘payday, vehicle title, and similar loans’’.

(7) The Bureau acknowledged that ‘‘markets for payday, vehicle title, and similar loans are regulated by a variety of state laws, as well as some tribal and municipal laws’’. The Bureau specifically acknowledged that ‘‘Some jurisdictions have imposed usury limits that prohibit lenders from offering high-cost credit. In other jurisdictions, certain products are specifically authorized by state laws, often crafted as exceptions to general state credit regulation, including consumer loan laws and general usury limits. Some of the states authorizing these products have sought to regulate loan structures and lender practices in a variety of ways, including limiting permissible costs, restricting reborrowing in certain cir-

cumstances, or setting a maximum ratio for the amount of debt on such loans to gross monthly income. States, tribes, and local governments also impose a variety of licensure requirements on lenders engaged in payday and vehicle title lending.''. This variation in State, local, and tribal law suggests a healthy, dynamic, legal environment in which the democratically elected representatives in each jurisdiction respond appropriately to the particular conditions, needs, and desires of their constituents.

(8) Notwithstanding the foregoing, the Director of the Bureau seeks to ''establish a federal floor for consumer protection for covered loans'', thus substituting the Director's own judgment for that of State, tribal, and local governments.

(9) The Bureau made no showing that any State or tribal government lacks the legal authority to enact laws or regulations that are substantially similar to the Bureau's outline of proposals.

(10) The Bureau made no showing that any State or tribal government is incapable of protecting its citizens from potential risks associated with using payday, vehicle title, and similar loans.

(11) The Bureau's proposals, if implemented, would be an unwarranted infringement of State and

tribal sovereignty and a violation of fundamental federalist principles designed to secure the liberty of the American people.

SEC. 3. MORATORIUM.

(a) PROHIBITION ON PAYDAY LOANS, VEHICLE TITLE LOANS, AND OTHER SIMILAR LOAN REGULATIONS.—The Bureau of Consumer Financial Protection may not issue or enforce any rule or regulation with respect to payday loans, vehicle title loans, or other similar loans during the 24-month period beginning on the date of enactment of this Act.

(b) PAYDAY LOAN.—For purposes of this section the term ''payday loan'' means a loan described under section 1024(a)(1)(E) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5514(a)(1)(E)).

SEC. 4. PROTECTING STATE AND TRIBAL GOVERNMENT SOVEREIGNTY.

Section 1022(b) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512(b)) is amended by adding at the end the following:

''(5) PROTECTING STATE AND TRIBAL GOVERNMENT SOVEREIGNTY WITH RESPECT TO PAYDAY LOANS, VEHICLE TITLE LOANS, AND OTHER SIMILAR LOANS.—

"(A) In general.—Notwithstanding any other provision of law, the Bureau may not issue any final rule or regulation to regulate payday loans, vehicle title loans, or other similar loans, unless the Bureau first—

"(i) consults with appropriate State, tribal, and local officials in each jurisdiction that may be affected by the rule regarding the effect of the rule on State, tribal, or local sovereignty, laws, regulations, and citizens;

"(ii) carries out a study that—

"(I) examines the Bureau's constitutional and statutory authority to preempt State, tribal, and local laws and regulations;

"(II) examines the effect the rule or regulation will have on the laws and regulations of individual States, federally recognized Indian tribes, and municipalities; and

"(III) identifies alternative proposals to mitigate potential risks associated with using payday loans, vehicle title loans, and other similar loans without infringing upon State and tribal sovereignty or preempting State and tribal laws and regulations; and

“(iii) issues a public report that—

“(I) contains all findings and determinations made by the Bureau in carrying out such study;

“(II) addresses all comments and advice received during consultation with State, tribal, and local officials;

“(III) lists each State, tribal, or local law and regulation (or any portion thereof) the Bureau proposes to preempt by rule or regulation;

“(IV) identifies by name any State or federally recognized Indian tribe that lacks the legal authority to enact laws or regulations that are substantially similar to the rule or regulation, and states the basis for why the Bureau has determined that the State or federally recognized Indian tribe lacks such authority; and

“(V) identifies by name any State or federally recognized Indian tribe the Director believes is incapable of protecting its citizens from potential risks associated with using payday loans, vehicle title loans, and other similar loans, and states the basis for why the Bureau has determined that the State or federally recognized Indian tribe is incapable of such protection.

"(B) WAIVER FOR STATE AND TRIBAL GOVERNMENTS.—

"(i) IN GENERAL.—With respect to a final rule or regulation issued by the Bureau to regulate payday loans, vehicle title loans, or other similar loans, if a State or a federally recognized Indian tribe requests, in writing, for the Bureau to provide the State or tribe with a waiver from such rule or regulation, the Director shall grant a 5-year waiver to such State or tribe, during which such rule or regulation shall not apply within such State or land held in trust for the benefit of such federally recognized Indian tribe.

"(ii) RIGHT TO RENEW WAIVER.—A State or federally recognized Indian tribe granted a waiver under clause (i) shall have the right to renew such waiver at the end of each 5-year waiver period.".

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