

115TH CONGRESS  
2D SESSION

# S. 2417

To amend the Truth in Lending Act to address certain issues relating to the extension of consumer credit, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2018

Mr. MERKLEY (for himself, Mrs. MURRAY, Mr. BLUMENTHAL, Mr. SANDERS, Mr. WYDEN, Mr. MARKEY, Mrs. FEINSTEIN, Mr. BOOKER, Ms. WARREN, Mr. UDALL, Ms. BALDWIN, Ms. DUCKWORTH, Ms. SMITH, Mrs. GILLIBRAND, Ms. HARRIS, Mr. HEINRICH, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the Truth in Lending Act to address certain issues relating to the extension of consumer credit, 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 “Stopping Abuse and  
5       Fraud in Electronic Lending Act of 2018” or the “SAFE  
6       Lending Act of 2018”.

1 **SEC. 2. CONSUMER CONTROL OVER BANK ACCOUNTS.**

2 (a) PROHIBITING UNAUTHORIZED REMOTELY CRE-  
 3 ATED CHECKS.—Section 905 of the Electronic Fund  
 4 Transfer Act (15 U.S.C. 1693c) is amended by adding at  
 5 the end the following:

6 “(d) LIMITATIONS ON REMOTELY CREATED  
 7 CHECKS.—

8 “(1) DEFINITION.—In this subsection—

9 “(A) the term ‘remotely created check’  
 10 means a check, including a paper or electronic  
 11 check and any other payment order that the  
 12 Bureau, by rule, determines is appropriately  
 13 covered under this subsection, that—

14 “(i) is not created by the financial in-  
 15 stitution that holds the customer account  
 16 from which the check is to be paid; and

17 “(ii) does not bear a signature ap-  
 18 plied, or purported to be applied, by the  
 19 person from whose account the check is to  
 20 be paid; and

21 “(B) the term ‘Federal consumer financial  
 22 law’ has the meaning given the term in section  
 23 1002 of the Consumer Financial Protection Act  
 24 of 2010 (12 U.S.C. 5481).

25 “(2) LIMITATIONS.—Subject to the limitations  
 26 in paragraph (3) and any additional limitations that

the Bureau may establish, by rule, a remotely created check may only be issued by a person designated in writing by a consumer, with that written designation specifically provided by the consumer to the insured depository institution at which the consumer maintains the account from which the check is to be drawn.

“(3) ADDITIONAL LIMITATIONS.—

“(A) IN GENERAL.—A designation provided by a consumer under paragraph (2) may be revoked at any time by the consumer.

“(B) CONSUMER FINANCIAL PROTECTION LAWS.—No payment order, including a remotely created check, may be issued by any person in response to the exercise of, or attempt to exercise, any right by a consumer under—

“(i) any Federal consumer financial law; or

“(ii) any other provision of any law or regulation within the jurisdiction of the Bureau.”.

(b) CONSUMER PROTECTIONS FOR CERTAIN ONE-TIME ELECTRONIC FUND TRANSFERS.—Section 913 of the Electronic Fund Transfer Act (15 U.S.C. 1693k) is amended—

1 (1) in the matter preceding paragraph (1), by  
 2 inserting “(a) IN GENERAL.—” before “No person”;

3 (2) in subsection (a)(1), as so designated, by  
 4 striking “preauthorized electronic fund transfers”  
 5 and inserting “an electronic fund transfer”; and

6 (3) by adding at the end the following:

7 “(b) TREATMENT FOR ELECTRONIC FUND TRANS-  
 8 FERS IN CREDIT EXTENSIONS.—If a consumer voluntarily  
 9 agrees to repay an extension of a small-dollar consumer  
 10 credit transaction, as defined in section 110(a) of the  
 11 Truth in Lending Act, by means of an electronic fund  
 12 transfer, the electronic fund transfer shall be treated as  
 13 a preauthorized electronic fund transfer subject to the pro-  
 14 tections of this title.”.

15 **SEC. 3. TRANSPARENCY AND CONSUMER EMPOWERMENT**  
 16 **IN SMALL-DOLLAR LENDING.**

17 (a) SMALL-DOLLAR CONSUMER CREDIT TRANS-  
 18 ACTIONS.—

19 (1) IN GENERAL.—The Truth in Lending Act  
 20 (15 U.S.C. 1601 et seq.) is amended—

21 (A) by inserting after section 109 (15  
 22 U.S.C. 1608) the following:

1 **“SEC. 110. REGISTRATION REQUIREMENT FOR SMALL-DOL-**  
 2 **LAR LENDERS.**

3 “(a) DEFINITION.—In this section, the term ‘small-  
 4 dollar consumer credit transaction’—

5 “(1) means any transaction that extends credit  
 6 that is—

7 “(A) made to a consumer in an amount  
 8 that—

9 “(i) is not more than—

10 “(I) \$5,000; or

11 “(II) such greater amount as the  
 12 Bureau may, by rule, determine; and

13 “(ii) shall be adjusted annually to re-  
 14 flect changes in the Consumer Price Index  
 15 for all urban consumers published by the  
 16 Department of Labor; and

17 “(B) extended pursuant to an agreement  
 18 that is—

19 “(i)(I) other than an open end credit  
 20 plan; and

21 “(II) payable in one or more install-  
 22 ments of less than 12 months (or such  
 23 longer period as the Bureau may, by rule,  
 24 determine);

25 “(ii) an open end credit plan in which  
 26 each advance is fully repayable within a

1 defined time or in connection with a de-  
 2 fined event, or both; or

3 “(iii) any other plan as the Bureau  
 4 determines, by rule; and

5 “(2) includes any action that facilitates, bro-  
 6 kers, arranges, or gathers applications for a trans-  
 7 action described in paragraph (1).

8 “(b) REGISTRATION REQUIREMENT.—A person shall  
 9 register with the Bureau before issuing credit in a small-  
 10 dollar consumer credit transaction.”; and

11 (B) in section 173 (15 U.S.C. 1666j), by  
 12 adding at the end the following:

13 “(d) Notwithstanding any other provision of this title,  
 14 any small-dollar consumer credit transaction, as defined  
 15 in section 110(a), shall comply with the laws of the State  
 16 in which the consumer to which credit in the transaction  
 17 is extended resides with respect to annual percentage  
 18 rates, interest, fees, charges, and such other similar or re-  
 19 lated matters as the Bureau may, by rule, determine if  
 20 the small-dollar consumer credit transaction is—

21 “(1) made over—

22 “(A) the Internet;

23 “(B) telephone;

24 “(C) facsimile;

25 “(D) mail;

1 “(E) electronic mail; or

2 “(F) other electronic communication; or

3 “(2) conducted by a national bank.”.

4 (2) TECHNICAL AND CONFORMING AMEND-  
5 MENT.—The table of sections for chapter 1 of the  
6 Truth in Lending Act (15 U.S.C. 1601 et seq.) is  
7 amended by inserting after the item relating to sec-  
8 tion 109 the following:

“110. Registration requirement for small-dollar lenders.”.

9 (b) PROHIBITION ON CERTAIN FEES.—Section 915  
10 of the Electronic Fund Transfer Act (15 U.S.C. 1693l–  
11 1) is amended—

12 (1) by redesignating subsection (d) as sub-  
13 section (e); and

14 (2) by inserting after subsection (c) the fol-  
15 lowing:

16 “(d) ADDITIONAL FEES PROHIBITED.—

17 “(1) DEFINITION.—In this subsection, the term  
18 ‘prepaid account’ has the meaning given the term by  
19 rule of the Bureau.

20 “(2) PROHIBITION.—With respect to the use of  
21 a prepaid account by a consumer—

22 “(A) it shall be unlawful for any person to  
23 charge the consumer a fee for an overdraft with  
24 respect to the prepaid account, including a  
25 shortage of funds or a transaction processed for

1 an amount exceeding the account balance of the  
2 prepaid account;

3 “(B) any transaction for an amount that  
4 exceeds the account balance of the prepaid ac-  
5 count may be declined, except that the con-  
6 sumer may not be charged a fee for that pur-  
7 pose; and

8 “(C) the Bureau may, by rule, prohibit the  
9 charging of any fee so that the Bureau may—

10 “(i) prevent unfair, deceptive, or abu-  
11 sive practices; and

12 “(ii) promote the ability of the con-  
13 sumer to understand and compare the  
14 costs of prepaid accounts.”.

15 **SEC. 4. RESTRICTIONS ON LEAD GENERATION IN SMALL-**  
16 **DOLLAR CONSUMER CREDIT TRANSACTIONS.**

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:

20 **“SEC. 140B. RESTRICTIONS ON LEAD GENERATION IN**  
21 **SMALL-DOLLAR CONSUMER CREDIT TRANS-**  
22 **ACTIONS.**

23 “(a) DEFINITIONS.—In this section—

24 “(1) the terms ‘Internet access service’ and  
25 ‘Internet information location tool’ have the mean-

1        ings given those terms in section 231(e) of the Com-  
2        munications Act of 1934 (47 U.S.C. 231(e));

3            “(2) the term ‘sensitive personal financial infor-  
4        mation’ means a Social Security number, financial  
5        account number, bank routing number, bank ac-  
6        count number, or security or access code that is im-  
7        mediately necessary to permit access to the financial  
8        account of an individual; and

9            “(3) the term ‘small-dollar consumer credit  
10       transaction’ has the meaning given the term in sec-  
11       tion 110(a).

12        “(b) IDENTIFICATION INFORMATION.—Any person  
13       facilitating, brokering, arranging for, or gathering applica-  
14       tions for the distribution of sensitive personal financial in-  
15       formation in connection with a small-dollar consumer  
16       credit transaction shall prominently disclose information  
17       by which the person may be contacted or identified, includ-  
18       ing for service of process and for identification of the reg-  
19       istrant of any domain name registered or used.

20        “(c) PROHIBITION ON LEAD GENERATION IN SMALL-  
21       DOLLAR CONSUMER CREDIT TRANSACTIONS.—No person  
22       may facilitate, broker, arrange for, or gather applications  
23       for the distribution of sensitive personal financial informa-  
24       tion in connection with a small-dollar consumer credit

1 transaction unless the person is directly providing the  
 2 small-dollar consumer credit to a consumer.

3 “(d) RULE OF CONSTRUCTION.—

4 “(1) IN GENERAL.—Nothing in this section  
 5 may be construed to limit the authority of the Bu-  
 6 reau to further restrict activities covered by this sec-  
 7 tion.

8 “(2) CLARIFICATION.—For the purposes of this  
 9 section, it shall not be considered facilitating the dis-  
 10 tribution of sensitive personal financial information  
 11 in connection with a small-dollar consumer credit  
 12 transaction to be engaged solely in one of the fol-  
 13 lowing activities:

14 “(A) The provision of a telecommuni-  
 15 cations service, an Internet access service, or an  
 16 Internet information location tool.

17 “(B) The transmission, storage, retrieval,  
 18 hosting, formatting, or translation (or any com-  
 19 bination thereof) of a communication, without  
 20 selection or alteration of the content of the  
 21 communication, except the deletion of a par-  
 22 ticular communication or material made by an-  
 23 other person in a manner that is consistent  
 24 with section 230(c) of the Communications Act  
 25 of 1934 (47 U.S.C. 230(c)).”.

1 (b) TECHNICAL AND CONFORMING AMENDMENT.—

2 The table of sections for chapter 2 of the Truth in Lend-  
 3 ing Act (15 U.S.C. 1631 et seq.) is amended by adding  
 4 at the end the following:

“140B. Restrictions on lead generation in small-dollar consumer credit trans-  
 actions.”.

5 **SEC. 5. STUDIES.**

6 (a) DEFINITIONS.—In this section—

7 (1) the term “appropriate committees of Con-  
 8 gress” means—

9 (A) the Committee on Banking, Housing,  
 10 and Urban Affairs of the Senate;

11 (B) the Committee on Indian Affairs of the  
 12 Senate;

13 (C) the Committee on Financial Services of  
 14 the House of Representatives; and

15 (D) the Committee on Natural Resources  
 16 of the House of Representatives; and

17 (2) the term “Indian tribe” has the meaning  
 18 given the term in section 4 of the Indian Self-Deter-  
 19 mination and Education Assistance Act (25 U.S.C.  
 20 5304).

21 (b) STUDY REQUIRED.—Not later than 180 days  
 22 after the date of enactment of this Act, the Comptroller  
 23 General of the United States shall conduct a study regard-  
 24 ing—

1           (1) the availability of capital on reservations of  
2       Indian tribes; and

3           (2) the impact that small-dollar consumer credit  
4       extended through Internet and non-Internet means  
5       to members of Indian tribes has had on economic  
6       opportunity and wealth for members of Indian  
7       tribes.

8       (c) CONSULTATION.—In conducting the study re-  
9       quired under subsection (b), the Comptroller General of  
10      the United States shall consult, as appropriate, with—

11           (1) the Bureau of Consumer Financial Protec-  
12      tion;

13           (2) the Board of Governors of the Federal Re-  
14      serve System;

15           (3) the Director of the Bureau of Indian Af-  
16      fairs;

17           (4) federally recognized Indian tribes; and

18           (5) community development financial institu-  
19      tions operating in Indian lands.

20       (d) CONGRESSIONAL CONSIDERATION.—The Comp-  
21      troller General of the United States shall submit to the  
22      appropriate committees of Congress the study required  
23      under subsection (b).

1 **SEC. 6. RULEMAKING.**

2       Not later than 1 year after the date of the enactment  
3 of this Act, the Bureau of Consumer Financial Protection  
4 shall adopt any final rules necessary to implement the pro-  
5 visions of this Act and the amendments made by this Act.

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