

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.

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

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. 1693e) 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

1 the Bureau may establish, by rule, a remotely cre-
2 ated check may only be issued by a person des-
3 igned in writing by a consumer, with that written
4 designation specifically provided by the consumer to
5 the insured depository institution at which the con-
6 sumer maintains the account from which the check
7 is to be drawn.

8 “(3) ADDITIONAL LIMITATIONS.—

9 “(A) IN GENERAL.—A designation pro-
10 vided by a consumer under paragraph (2) may
11 be revoked at any time by the consumer.

12 “(B) CONSUMER FINANCIAL PROTECTION
13 LAWS.—No payment order, including a re-
14 motely created check, may be issued by any per-
15 son in response to the exercise of, or attempt to
16 exercise, any right by a consumer under—

17 “(i) any Federal consumer financial
18 law; or

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

22 (b) CONSUMER PROTECTIONS FOR CERTAIN ONE-
23 TIME ELECTRONIC FUND TRANSFERS.—Section 913 of
24 the Electronic Fund Transfer Act (15 U.S.C. 1693k) is
25 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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