

118TH CONGRESS
1ST SESSION

S. 2730

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 6, 2023

Mr. DURBIN (for himself, Mr. BLUMENTHAL, 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 2023”.

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 servicemembers 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 have paid as much as approxi-
15 mately \$14,000,000,000 on high-cost overdraft
16 loans, \$9,000,000,000 on storefront and online pay-
17 day loans, \$3,800,000,000 on car title loans, and ad-
18 ditional amounts in unreported revenues on high-
19 cost online installment loans;

20 (5) cash-strapped consumers pay on average
21 approximately 400-percent annual interest for pay-
22 day loans, 300-percent annual interest for car title
23 loans, 17,000 percent for bank overdraft loans, and
24 triple-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 Chapter 2 of the Truth in Lending Act (15 U.S.C.
10 1631 et seq.) is amended by adding at the end the fol-
11 lowing:

12 **“SEC. 140B. MAXIMUM RATES OF INTEREST.**

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

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

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

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

1 “(i) an extension of credit or making
2 available a line of credit, such as fees con-
3 nected with credit extension or availability
4 such as numerical periodic rates, annual
5 fees, cash advance fees, and membership
6 fees; or

7 “(ii) any fees for default or breach by
8 a borrower of a condition upon which cred-
9 it was extended, such as late fees, insuffi-
10 cient funds fees, overdraft fees, and over-
11 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 insufficient
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) three times the amount of the total ac-
 4 crued debt associated with the subject transaction;
 5 or

6 “(2) \$50,000.

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

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

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

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