

114TH CONGRESS
2D SESSION

S. 2760

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

IN THE SENATE OF THE UNITED STATES

APRIL 7, 2016

Mr. MERKLEY (for himself, Mr. UDALL, Mr. SANDERS, Mr. FRANKEN, Mrs. MURRAY, Mr. WYDEN, Mr. DURBIN, Mr. BLUMENTHAL, Ms. WARREN, Ms. BALDWIN, Mr. MARKEY, Mr. BOOKER, and Mr. HEINRICH) 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 related 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 2016” or the “SAFE
6 Lending Act of 2016”.

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, the term
 9 ‘remotely created check’ means a check, including a
 10 paper or electronic check and any other payment
 11 order that the Bureau, by rule, determines is appro-
 12 priately covered by this subsection, that—

13 “(A) is not created by the financial institu-
 14 tion that holds the customer account from
 15 which the check is to be paid; and

16 “(B) does not bear a signature applied, or
 17 purported to be applied, by the person from
 18 whose account the check is to be paid.

19 “(2) LIMITATIONS.—Subject to the limitations
 20 in paragraph (3) and any additional limitations that
 21 the Bureau may establish, by rule, a remotely cre-
 22 ated check may only be issued by a person des-
 23 igned in writing by the consumer with the designa-
 24 tion specifically provided in writing by the consumer
 25 to the insured depository institution at which the

1 consumer maintains the account from which the
2 check is to be drawn.

3 “(3) ADDITIONAL LIMITATIONS.—

4 “(A) IN GENERAL.—An authorization pro-
5 vided under paragraph (2) may be revoked at
6 any time by the consumer.

7 “(B) CONSUMER FINANCIAL PROTECTION
8 LAWS.—No payment order, including a re-
9 motely created check, may be issued by any per-
10 son in response to the exercise of, or attempt to
11 exercise, any rights by a consumer under any
12 Federal consumer financial law, as defined in
13 section 1002 of the Consumer Financial Protec-
14 tion Act of 2010 (12 U.S.C. 5481), or any
15 other provision of any law or regulation within
16 the jurisdiction of the Bureau.”.

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

21 (1) by inserting “(a) IN GENERAL.—” before
22 “No person”;

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

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

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

10 **SEC. 3. TRANSPARENCY AND CONSUMER EMPOWERMENT**
 11 **IN SMALL-DOLLAR LENDING.**

12 (a) SMALL-DOLLAR CONSUMER CREDIT TRANS-
 13 ACTIONS.—The Truth in Lending Act (15 U.S.C. 1601
 14 et seq.) is amended—

15 (1) by inserting after section 109 (15 U.S.C.
 16 1608) the following:

17 **“SEC. 110. REGISTRATION REQUIREMENT FOR SMALL-DOL-
 18 LAR LENDERS.**

19 “(a) DEFINITION.—In this section, the term ‘small-
 20 dollar consumer credit transaction’ means any transaction
 21 that extends, facilitates, brokers, arranges, or gathers ap-
 22 plications for credit that is—

23 “(1) made to a consumer in an amount of not
 24 more than \$5,000, or such greater amount as the
 25 Bureau may, by rule, determine, with the amount to

1 be adjusted annually to reflect changes in the Con-
2 sumer Price Index for all urban consumers published
3 by the Department of Labor; and

4 “(2) extended pursuant to an agreement that
5 is—

6 “(A)(i) other than an open-end credit plan;
7 and

8 “(ii) payable in 1 or more installments of
9 less than 12 months (or such longer period as
10 the Bureau may, by rule, determine);

11 “(B) an open-end credit plan in which each
12 advance is fully repayable within a defined time
13 or in connection with a defined event, or both;
14 or

15 “(C) any other plan as the Bureau deter-
16 mines, by rule.

17 “(b) REGISTRATION REQUIREMENT.—A person shall
18 register with the Bureau before issuing credit in a small-
19 dollar consumer credit transaction.”;

20 (2) in section 173 (15 U.S.C. 1666j), by adding
21 at the end the following:

22 “(d) Notwithstanding any other provisions of this
23 title, any small-dollar consumer credit transaction, as de-
24 fined in section 110(a), shall comply with the laws of the
25 State in which the consumer resides with respect to annual

1 percentage rates, interest, fees, charges, and such other
 2 similar or related matters as the Bureau may, by rule,
 3 determine if the small-dollar consumer credit transaction
 4 is—

5 “(1) made over—
 6 “(A) the Internet;
 7 “(B) telephone;
 8 “(C) facsimile;
 9 “(D) mail;
 10 “(E) electronic mail; or
 11 “(F) other electronic communication; or
 12 “(2) conducted by a national bank.”; and

13 (3) in the table of sections of chapter 1, by in-
 14 serting after the item relating to section 109 the fol-
 15 lowing:

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

16 (b) PROHIBITION ON CERTAIN FEES.—Section 915
 17 of the Electronic Fund Transfer Act (15 U.S.C. 1693l-
 18 1) is amended—

19 (1) by redesignating subsection (d) as sub-
 20 section (e); and

21 (2) by inserting after subsection (e) the fol-
 22 lowing:

23 “(d) ADDITIONAL FEES PROHIBITED.—

1 “(1) DEFINITION.—In this subsection, the term
2 ‘general-use prepaid card’ has the meaning given the
3 term—

4 “(A) in subsection (a)(2); or

5 “(B) by rule of the Bureau.

6 “(2) PROHIBITION.—With respect to the use of
7 a general-use prepaid card by a consumer—

8 “(A) it shall be unlawful for any person to
9 charge the consumer a fee for an overdraft, in-
10 cluding a shortage of funds or a transaction
11 processed for an amount exceeding the account
12 balance on the general-use prepaid card;

13 “(B) any transaction for an amount ex-
14 ceeding the account balance on the general-use
15 prepaid card may be declined, except that the
16 consumer may not be charged a fee for that
17 purpose; and

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

20 “(i) prevent unfair, deceptive, or abu-
21 sive practices; and

22 “(ii) promote the ability of the con-
23 sumer to understand and compare the
24 costs of general-use prepaid cards.”.

1 **SEC. 4. RESTRICTIONS ON LEAD GENERATION IN SMALL-**
2 **DOLLAR CONSUMER CREDIT TRANSACTIONS.**

3 Chapter 2 of the Truth in Lending Act (15 U.S.C.
4 1631 et seq.) is amended by adding at the end the fol-
5 lowing:

6 **“SEC. 140B. RESTRICTIONS ON LEAD GENERATION IN**
7 **SMALL-DOLLAR CONSUMER CREDIT TRANS-**
8 **ACTIONS.**

9 “(a) **DEFINITIONS.**—In this section—

10 “(1) the term ‘sensitive personal financial infor-
11 mation’ means the social security number, financial
12 account number, bank routing number, bank ac-
13 count number, or any required security or access
14 code that is immediately necessary to permit access
15 to the financial account of an individual; and

16 “(2) the term ‘small-dollar consumer credit
17 transaction’ has the meaning given the term in sec-
18 tion 110(a).

19 “(b) **IDENTIFICATION INFORMATION.**—Any person
20 facilitating, brokering, arranging, gathering applications
21 for, or distributing sensitive personal financial information
22 in connection with a small-dollar consumer credit trans-
23 action shall prominently disclose information by which the
24 person may be contacted or identified, including for serv-
25 ice of process and for identification of the registrant of
26 any domain name registered or used.

1 “(c) PROHIBITION ON LEAD GENERATION IN SMALL-
2 DOLLAR CONSUMER CREDIT TRANSACTIONS.—No person
3 may facilitate, broker, arrange, gather applications for, or
4 distribute sensitive personal financial information in con-
5 nection with a small-dollar consumer credit transaction,
6 unless the person is directly providing the small-dollar
7 consumer credit to the consumer.

8 “(d) RULE OF CONSTRUCTION.—

9 “(1) IN GENERAL.—Nothing in this section
10 may be interpreted to limit the authority of the Bu-
11 reau to further restrict activities covered by this sec-
12 tion.

13 “(2) CLARIFICATION.—It shall not be consid-
14 ered ‘facilitating’ in connection with a small-dollar
15 consumer credit transaction to be engaged solely in
16 1 of the following activities:

17 “(A) The provision of a telecommuni-
18 cations service, or of an Internet access service
19 or Internet information location tool (as those
20 terms are defined in section 231 of the Commu-
21 nications Act of 1934 (47 U.S.C. 231)).

22 “(B) The transmission, storage, retrieval,
23 hosting, formatting, or translation (or any com-
24 bination thereof) of a communication, without
25 selection or alteration of the content of the

1 communication, except that deletion of a par-
2 ticular communication or material made by an-
3 other person in a manner consistent with sec-
4 tion 230(e) of the Communications Act of 1934
5 (47 U.S.C. 230(e)).”.

6 **SEC. 5. STUDIES.**

7 (a) IN GENERAL.—Not later than 180 days after the
8 date of enactment of this Act, the Government Account-
9 ability Office (in this section referred to as the “GAO”)
10 shall conduct a study regarding—

11 (1) the availability of capital on reservations of
12 Indian tribes (as defined in section 4 of the Indian
13 Self-Determination and Education Assistance Act
14 (25 U.S.C. 450b)); and

15 (2) the impact that small-dollar consumer credit
16 extended through Internet and non-Internet means
17 to members of Indian tribes has had on economic
18 opportunity and wealth for members of Indian
19 tribes.

20 (b) CONSULTATION.—In conducting the study de-
21 scribed in subsection (a), the GAO shall consult, as appro-
22 priate, with—

23 (1) the Bureau of Consumer Financial Protec-
24 tion;

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

3 (3) the Bureau of Indian Affairs;

4 (4) federally recognized Indian tribes; and

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

7 (c) CONGRESSIONAL CONSIDERATION.—The study
8 described in subsections (a) and (b) shall be presented to
9 the Committee on Banking, Housing, and Urban Affairs
10 and the Committee on Indian Affairs of the Senate and
11 the Committee on Financial Services and the Committee
12 on Natural Resources of the House of Representatives.

13 **SEC. 6. RULEMAKING.**

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

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