

106TH CONGRESS
2D SESSION

S. 2415

To amend the Home Ownership and Equity Protection Act of 1994 and other sections of the Truth in Lending Act to protect consumers against predatory practices in connection with high cost mortgage transactions, to strengthen the civil remedies available to consumers under existing law, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 12, 2000

Mr. SARBANES (for himself, Mr. DODD, Mr. SCHUMER, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Home Ownership and Equity Protection Act of 1994 and other sections of the Truth in Lending Act to protect consumers against predatory practices in connection with high cost mortgage transactions, to strengthen the civil remedies available to consumers under existing law, 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 “Predatory Lending
5 Consumer Protection Act of 2000”.

1 **SEC. 2. AMENDMENTS TO DEFINITIONS IN TRUTH IN LEND-**
 2 **ING ACT.**

3 (a) HIGH COST MORTGAGES.—

4 (1) IN GENERAL.—The portion of section
 5 103(aa) of the Truth in Lending Act (15 U.S.C.
 6 1602(aa)) that precedes paragraph (2) of such sec-
 7 tion is amended to read as follows:

8 “(aa) MORTGAGE REFERRED TO IN THIS SUB-
 9 SECTION.—

10 “(1) DEFINITION.—

11 “(A) IN GENERAL.—A mortgage referred
 12 to in this subsection means a consumer credit
 13 transaction—

14 “(i) that is secured by the consumer’s
 15 principal dwelling, other than a reverse
 16 mortgage transaction; and

17 “(ii) the terms of which are described
 18 in at least 1 of the following subclauses:

19 “(I) The transaction is secured
 20 by a first mortgage on the consumer’s
 21 principal dwelling and the annual per-
 22 centage rate on the credit, at the con-
 23 summation of the transaction, will ex-
 24 ceed by more than 6 percentage
 25 points the yield on Treasury securities
 26 having comparable periods of maturity

1 on the 15th day of the month imme-
2 diately preceding the month in which
3 the application for the extension of
4 credit is received by the creditor;

5 “(II) The transaction is secured
6 by a junior or subordinate mortgage
7 on the consumer’s principal dwelling
8 and the annual percentage rate on the
9 credit, at the consummation of the
10 transaction, will exceed by more than
11 8 percentage points the yield on
12 Treasury securities having comparable
13 periods of maturity on the 15th day of
14 the month immediately preceding the
15 month in which the application for the
16 extension of credit is received by the
17 creditor.

18 “(III) The total points and fees
19 payable on the transaction will exceed
20 the greater of 5 percent of the total
21 loan amount or \$1,000.

22 “(B) INTRODUCTORY RATES NOT TAKEN
23 INTO ACCOUNT.—If the terms of any consumer
24 credit transaction that is secured by the con-
25 sumer’s principal dwelling offer, for any initial

or introductory period, an annual percentage rate of interest which—

“(i) is less than the annual percentage rate of interest which will apply after the end of such initial or introductory period; or

“(ii) in the case of an annual percentage rate which varies in accordance with an index, which is less than the current annual percentage rate under the index which will apply after the end of such period,

the annual percentage rate of interest that shall be taken into account for purposes of subclauses (I) and (II) of subparagraph (A)(ii) shall be the rate described in clause (i) or (ii) of this subparagraph rather than any rate in effect during the initial or introductory period.”.

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 103(aa)(2) of the Truth in Lending Act (15 U.S.C. 1602(aa)(2)) is amended—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B).

1 (b) POINTS AND FEES.—Section 103(aa)(4) of the
2 Truth in Lending Act (15 U.S.C. 1602(aa)(4)) is
3 amended—

4 (1) by striking subparagraph (B) and inserting
5 the following new subparagraph:

6 “(B) all compensation paid directly or indi-
7 rectly by a consumer or a creditor to a mort-
8 gage broker;”;

9 (2) by redesignating subparagraph (D) as sub-
10 paragraph (F); and

11 (3) by striking subparagraph (C) and inserting
12 the following new subparagraphs:

13 “(C) each of the charges listed in section
14 106(e) (except an escrow for future payment of
15 taxes and insurance);

16 “(D) the cost of all premiums financed by
17 the lender, directly or indirectly, for any credit
18 life, credit disability, credit unemployment or
19 credit property insurance, or any other life or
20 health insurance, or any payments financed by
21 the lender, directly or indirectly, for any debt
22 cancellation or suspension agreement or con-
23 tract, except that, for purposes of this subpara-
24 graph, insurance premiums or debt cancellation
25 or suspension fees calculated and paid on a

1 monthly basis shall not be considered financed
2 by the lender;

3 “(E) any prepayment penalty (as defined
4 in section 129(c)(5)) or other fee paid by the
5 consumer in connection with an existing loan
6 which is being refinanced with the proceeds of
7 the consumer credit transaction; and”.

8 (c) HIGH COST MORTGAGE LENDER.—

9 (1) IN GENERAL.—Section 103(f) of the Truth
10 in Lending Act (15 U.S.C. 1602(f)) is amended by
11 striking the last sentence and inserting “Any person
12 who originates 2 or more mortgages referred to in
13 subsection (aa) in any 12-month period, any person
14 who originates 1 or more such mortgages through a
15 mortgage broker or acted as a mortgage broker be-
16 tween originators and consumers on more than 5
17 mortgages referred to in subsection (aa) within the
18 preceding 12-month period, and any creditor-affili-
19 ated party shall be considered to be a creditor for
20 purposes of this title.”.

21 (2) CREDITOR-AFFILIATED PARTY DEFINED.—
22 Section 103 of the Truth in Lending Act (15 U.S.C.
23 1602) is amended by adding at the end the following
24 new subsection:

1 “(cc) CREDITOR-AFFILIATED PARTY.—The term
2 “creditor-affiliated party” means—

3 (1) any director, officer, employee, or control-
4 ling stockholder of, or agent for, a creditor;

5 (2) in the case of a creditor which is an insured
6 depository institution, any other person who has
7 filed or is required to file a change-in-control notice
8 with the appropriate Federal banking agency under
9 section 7(j) of the Federal Deposit Insurance Act;
10 and

11 (3) any shareholder, consultant, joint venture
12 partner, and any other person, including any inde-
13 pendent contractor (such as an attorney, appraiser,
14 or accountant), who participates in the conduct of
15 the affairs of, or controls the lending practices of, a
16 creditor, as determined (by regulation or on a case-
17 by-case) by the appropriate Federal agency under
18 subsection (a) or (c) of section 108 with respect to
19 the creditor.”.

20 **SEC. 3. AMENDMENTS TO EXISTING REQUIREMENTS FOR**
21 **HIGH COST CONSUMER MORTGAGES.**

22 (a) ADDITIONAL DISCLOSURES.—Section 129(a)(1)
23 of the Truth in Lending Act (15 U.S.C. 1639(a)(1)) is
24 amended by adding at the end the following new subpara-
25 graphs:

1 “(D) ‘The interest rate on this loan is
 2 much higher than most people pay. This means
 3 the chance that you will lose your home is much
 4 higher if you do not make all payments under
 5 the loan.’.

6 “(E) ‘You may be able to get a loan with
 7 a much lower interest rate. Before you sign any
 8 papers, you have the right to go see a credit
 9 and debt counseling service and to consult other
 10 lenders to find ways to get a cheaper loan.’.

11 “(F) ‘If you are taking out this loan to
 12 repay other loans, look to see how many months
 13 it will take to pay for this loan and what the
 14 total amount is that you will have to pay before
 15 this loan is repaid. Even though the total
 16 amount you will have to pay each month for
 17 this loan may be less than the total amount you
 18 are paying each month for those other loans,
 19 you may have to pay on this loan for many
 20 more months than those other loans which will
 21 cost you more money in the end.’”.

22 (b) PREPAYMENT PENALTY PROVISIONS.—Section
 23 129(c) of the Truth in Lending Act (15 U.S.C. 1639(c))
 24 is amended to read as follows:

25 “(c) PREPAYMENT PENALTY PROVISIONS.—

1 “(1) NO PREPAYMENT PENALTIES AFTER END
2 OF 24-MONTH PERIOD.—A mortgage referred to in
3 section 103(aa) may not contain terms under which
4 a consumer must pay any prepayment penalty for
5 any payment made after the end of the 24-month
6 period beginning on the date the mortgage is con-
7 summated.

8 “(2) NO PREPAYMENT PENALTIES IF MORE
9 THAN 3 PERCENT OF POINTS AND FEES WERE FI-
10 NANCED.—Subject to subsection (l)(1), a mortgage
11 referred to in section 103(aa) may not contain terms
12 under which a consumer must pay any prepayment
13 penalty for any payment made at or before the end
14 of the 24-month period referred to in paragraph (1)
15 if the creditor financed points or fees in connection
16 with the consumer credit transaction in an amount
17 equal to or greater than 3 percent of the total
18 amount of credit extended in the transaction.

19 “(3) LIMITED PREPAYMENT PENALTY FOR
20 EARLY REPAYMENT UNDER CERTAIN CIR-
21 CUMSTANCES.—Subject to paragraph (2), the terms
22 of a mortgage referred to in section 103(aa) may
23 contain terms under which a consumer must pay a
24 prepayment penalty for any payment made at or be-
25 fore the end of the 24-month period referred to in

1 paragraph (1) to the extent the sum of total amount
2 of points or fees financed by the creditor, if any, in
3 connection with the consumer credit transaction and
4 the total amount payable as a prepayment penalty
5 does not exceed the amount which is equal to 3 per-
6 cent of the total amount of credit extended in the
7 transaction.

8 “(4) CONSTRUCTION.—For purposes of this
9 subsection, any method of computing a refund of un-
10 earned scheduled interest is a prepayment penalty if
11 it is less favorable to the consumer than the actu-
12 arial method (as that term is defined in section
13 933(d) of the Housing and Community Development
14 Act of 1992).

15 “(5) PREPAYMENT PENALTY DEFINED.—The
16 term ‘prepayment penalty’ means any monetary pen-
17 alty imposed on a consumer for paying all or part
18 of the principal with respect to a consumer credit
19 transaction before the date on which the principal is
20 due.”.

21 (c) ALL BALLOON PAYMENTS PROHIBITED.—Section
22 129(e) of the Truth in Lending Act (15 U.S.C. 1639(e))
23 is amended by striking “having a term of less than 5
24 years”.

1 (d) ASSESSMENT OF ABILITY TO REPAY.—Section
2 129(h) of the Truth in Lending Act (15 U.S.C. 1639(h))
3 is amended—

4 (1) by striking “CONSUMER.—A creditor” and
5 inserting “CONSUMER.—

6 “(1) PROHIBITION ON PATTERNS AND PRAC-
7 TICES.—A creditor”; and

8 (2) by adding at the end the following new
9 paragraphs:

10 “(2) CASE-BY-CASE ASSESSMENTS OF CON-
11 SUMER ABILITY TO PAY REQUIRED.—

12 “(A) IN GENERAL.—In addition to the pro-
13 hibition in paragraph (1) on engaging in certain
14 patterns and practices, a creditor may not ex-
15 tend any credit in connection with any mort-
16 gage referred to in section 103(aa) unless the
17 creditor has determined, at the time such credit
18 is extended, that 1 or more of the resident obli-
19 gors, when considered individually and collec-
20 tively, will be able to make the scheduled pay-
21 ments under the terms of the transaction based
22 on a consideration of their current and expected
23 income, current obligations, employment status,
24 and other financial resources, without taking

1 into account any equity of any such obligor in
2 the dwelling which is the security for the credit.

3 “(B) REGULATIONS.—The Board shall
4 prescribe, by regulation the appropriate format
5 for determining a consumer’s ability to pay and
6 the criteria to be considered in making any
7 such determination.

8 “(C) RESIDENT OBLIGOR.—For purposes
9 of this paragraph, the term ‘resident obligor’
10 means an obligor for whom the dwelling secur-
11 ing the extension of credit is, or upon the con-
12 summation of the transaction will be, the prin-
13 cipal residence.

14 “(3) VERIFICATION.—The requirements of
15 paragraphs (1) and (2) shall not be deemed to have
16 been met unless any information relied upon by the
17 creditor for purposes of any such paragraph has
18 been verified by the creditor independently of infor-
19 mation provided by any resident obligor.”.

20 (e) REQUIREMENTS RELATING TO HOME IMPROVE-
21 MENT CONTRACTS.—Section 129(i) of the Truth in Lend-
22 ing Act (15 U.S.C. 1639(i)) is amended—

23 (1) by striking “IMPROVEMENT CONTRACTS.—
24 A creditor” and inserting “IMPROVEMENT CON-
25 TRACTS.—

1 “(1) IN GENERAL.—A creditor”; and

2 (2) by adding at the end the following new
3 paragraph:

4 “(2) AFFIRMATIVE CLAIMS AND DEFENSES.—

5 Notwithstanding any other provision of law, any as-
6 signee or holder, in any capacity, of a mortgage re-
7 ferred to in section 103(aa) which was made, ar-
8 ranged, or assigned by a person financing home im-
9 provements to the dwelling of a consumer shall be
10 subject to all affirmative claims and defenses which
11 the consumer may have against the seller, home im-
12 provement contractor, broker, or creditor with re-
13 spect to such mortgage or home improvements.”.

14 (f) CLARIFICATION OF RESCISSION RIGHTS.—Sec-
15 tion 129(j) of the Truth in Lending Act (15 U.S.C.
16 1639(j)) is amended to read as follows:

17 “(j) CONSEQUENCE OF FAILURE TO COMPLY.—

18 “(1) IN GENERAL.—If, in the case of a mort-
19 gage referred to in section 103(aa)—

20 “(A) the mortgage contains a provision
21 prohibited by this section or does not contain a
22 provision required by this section; or

23 “(B) a creditor or other person fails to
24 comply with the provisions of this section,

1 whether by an act or omission, with regard to
 2 such mortgage at any time,
 3 the consummation of the consumer credit trans-
 4 action resulting in such mortgage shall be treated as
 5 a failure to deliver the material disclosures required
 6 under this title for the purpose of section 125.

7 “(2) RULE OF APPLICATION.—In any applica-
 8 tion of section 125 to a mortgage described in sec-
 9 tion 103(aa) under circumstances described in para-
 10 graph (1), paragraphs (2) and (4) of section 125(e)
 11 shall not apply or be taken into account.”.

12 **SEC. 4. ADDITIONAL REQUIREMENTS FOR HIGH COST CON-**
 13 **SUMER MORTGAGES.**

14 (a) SINGLE PREMIUM CREDIT INSURANCE.—Section
 15 129 of the Truth in Lending Act (15 U.S.C. 1639) is
 16 amended—

17 (1) by redesignating subsections (k) and (l) as
 18 subsections (s) and (t), respectively; and

19 (2) by inserting after subsection (j), the fol-
 20 lowing new subsection:

21 “(k) SINGLE PREMIUM CREDIT INSURANCE.—

22 “(1) IN GENERAL.—The terms of a mortgage
 23 referred to in section 103(aa) may not require, and
 24 no creditor or other person may require or allow—

1 “(A) the advance collection of a premium,
2 on a single premium basis, for any credit life,
3 credit disability, credit unemployment, or credit
4 property insurance, and any analogous product;
5 or

6 “(B) the advance collection of a fee for any
7 debt cancellation or suspension agreement or
8 contract,
9 in connection with any such mortgage, whether such
10 premium or fee is paid directly by the consumer or
11 is financed by the consumer through such mortgage.

12 “(2) RULE OF CONSTRUCTION.—Paragraph (1)
13 shall not be construed as affecting the right of a
14 creditor to collect premium payments on insurance
15 or debt cancellation or suspension fees referred to in
16 paragraph (1) that are calculated and paid on a reg-
17 ular monthly basis, if the insurance transaction is
18 conducted separately from the mortgage transaction,
19 the insurance may be canceled by the consumer at
20 any time, and the insurance policy is automatically
21 canceled upon repayment or other termination of the
22 mortgage referred to in paragraph (1).”.

23 (b) RESTRICTION ON FINANCING POINTS AND
24 FEES.—Section 129 of the Truth in Lending Act (15
25 U.S.C. 1639) is amended by inserting after subsection (k)

1 (as added by subsection (a) of this section) the following
 2 new subsection:

3 “(1) RESTRICTION ON FINANCING POINTS AND
 4 FEES.—

5 “(1) LIMIT ON AMOUNT OF POINTS AND FEES
 6 THAT MAY BE FINANCED.—Subject to paragraphs
 7 (2) and (3) of subsection (c), no creditor may, in
 8 connection with the formation or consummation of a
 9 mortgage referred to in section 103(aa), finance, di-
 10 rectly or indirectly, any portion of the points, fees,
 11 or other charges payable to the creditor or any third
 12 party in an amount in excess of the greater of 3 per-
 13 cent of the total loan amount or \$600.

14 “(2) PROHIBITION ON FINANCING CERTAIN
 15 POINTS, FEES, OR CHARGES.—No creditor may, in
 16 connection with the formation or consummation of a
 17 mortgage referred to in section 103(aa), finance, di-
 18 rectly or indirectly, any of the following fees or other
 19 charges payable to the creditor or any third party:

20 “(A) Any prepayment fee or penalty re-
 21 quired to be paid by the consumer in connection
 22 with a loan or other extension of credit which
 23 is being refinanced by such mortgage if the
 24 creditor, with respect to such mortgage, or any
 25 affiliate of the creditor, is the creditor with re-

1 spect to the loan or other extension of credit
2 being refinanced.

3 “(B) Any points, fees, or other charges re-
4 quired to be paid by the consumer in connection
5 with such mortgage if—

6 “(i) the mortgage is being entered
7 into in order to refinance an existing mort-
8 gage of the consumer that is referred to in
9 section 103(aa); and

10 “(ii) if the creditor, with respect to
11 such new mortgage, or any affiliate of the
12 creditor, is the creditor with respect to the
13 existing mortgage which is being refi-
14 nanced.”.

15 (c) CREDITOR CALL PROVISION.—Section 129 of the
16 Truth in Lending Act (15 U.S.C. 1639) is amended by
17 inserting after subsection (l) (as added by subsection (b)
18 of this section) the following new subsection:

19 “(m) CREDITOR CALL PROVISION.—

20 “(1) IN GENERAL.—A mortgage referred to in
21 section 103(aa) may not include terms under which
22 the indebtedness may be accelerated by the creditor,
23 in the creditor’s sole discretion.

1 “(2) EXCEPTION.—Paragraph (1) shall not
 2 apply when repayment of the loan has been acceler-
 3 ated as a result of a bona fide default.”.

4 (d) PROHIBITION ON ACTIONS ENCOURAGING DE-
 5 FAULT.—Section 129 of the Truth in Lending Act (15
 6 U.S.C. 1639) is amended by inserting after subsection (m)
 7 (as added by subsection (c) of this section) the following
 8 new subsection:

9 “(n) PROHIBITION ON ACTIONS ENCOURAGING DE-
 10 FAULT.—No creditor may make any statement, take any
 11 action, or fail to take any action before or in connection
 12 with the formation or consummation of any mortgage re-
 13 ferred to in section 103(aa) to refinance all or any portion
 14 of an existing loan or other extension of credit, if the state-
 15 ment, action, or failure to act has the effect of encour-
 16 aging or recommending the consumer to default on the
 17 existing loan or other extension of credit at any time be-
 18 fore, or in connection with, the closing or any scheduled
 19 closing on such mortgage.”.

20 (e) MODIFICATION OR DEFERRAL FEES.—Section
 21 129 of the Truth in Lending Act (15 U.S.C. 1639) is
 22 amended by inserting after subsection (n) (as added by
 23 subsection (d) of this section) the following new sub-
 24 section:

25 “(o) MODIFICATION OR DEFERRAL FEES.—

1 “(1) IN GENERAL.—Except as provided in para-
 2 graph (2), a creditor may not charge any consumer
 3 with respect to a mortgage referred to in section
 4 103(aa) any fee or other charge—

5 “(A) to modify, renew, extend, or amend
 6 such mortgage, or any provision of the terms of
 7 the mortgage; or

8 “(B) to defer any payment otherwise due
 9 under the terms of the mortgage.

10 “(2) EXCEPTION FOR MODIFICATIONS FOR THE
 11 BENEFIT OF THE CONSUMER.—Paragraph (1) shall
 12 not apply with respect to any fee imposed in connec-
 13 tion with any action described in subparagraph (A)
 14 or (B) if—

15 “(A) the action provides a material benefit
 16 to the consumer; and

17 “(B) the amount of the fee or charge does
 18 not exceed—

19 “(i) an amount equal to 0.5 percent of
 20 the total loan amount; or

21 “(ii) in any case in which the total
 22 loan amount of the mortgage does not ex-
 23 ceed \$60,000, an amount in excess of
 24 \$300.”.

1 (f) CONSUMER COUNSELING REQUIREMENTS.—Sec-
 2 tion 129 of the Truth in Lending Act (15 U.S.C. 1639)
 3 is amended by inserting after subsection (o) (as added by
 4 subsection (e) of this section) the following new sub-
 5 section:

6 “(p) CONSUMER COUNSELING REQUIREMENT.—

7 “(1) IN GENERAL.—A creditor may not extend
 8 any credit in the form of a mortgage referred to in
 9 section 103(aa) to any consumer, unless the creditor
 10 has provided to the consumer, at such time before
 11 the consummation of the mortgage and in such man-
 12 ner as the Board shall provide by regulation, all of
 13 the following:

14 “(A) All warnings and disclosures regard-
 15 ing the risks of the mortgage to the consumer.

16 “(B) A separate written statement recom-
 17 mending that the consumer take advantage of
 18 available home ownership or credit counseling
 19 services before agreeing to the terms of any
 20 mortgage referred to in section 103(aa).

21 “(C) A written statement containing the
 22 names, addresses, and telephone numbers of
 23 counseling agencies or programs reasonably
 24 available to the consumer that have been cer-
 25 tified or approved by the Secretary of Housing

and Urban Development, a State housing finance authority (as defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989), or the agency referred to in subsection (a) or (c) of section 108 with jurisdiction over the creditor as qualified to provide counseling on—

“(i) the advisability of a high cost loan transaction; and

“(ii) the appropriateness of a high cost loan for the consumer.

“(D) COMPLETE AND UPDATED LISTS REQUIRED.—Any failure to provide as complete or updated a list under paragraph (1)(C) as is reasonably possible shall constitute a violation of this section.”.

(g) ARBITRATION.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (p) (as added by subsection (f) of this section) the following new subsection:

“(q) ARBITRATION.—

“(1) IN GENERAL.—A mortgage referred to in section 103(aa) may not include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.

1 “(2) POST-CONTROVERSY AGREEMENTS.—Sub-
2 ject to paragraph (3), paragraph (1) shall not be
3 construed as limiting the right of the consumer and
4 the creditor to agree to arbitration or any other non-
5 judicial procedure as the method for resolving any
6 controversy at any time after a dispute or claim
7 under the transaction arises.

8 “(3) NO WAIVER OF STATUTORY CAUSE OF AC-
9 TION.—No provision of any mortgage referred to in
10 section 103(aa) or any agreement between the con-
11 sumer and the creditor shall be applied or inter-
12 preted so as to bar a consumer from bringing an ac-
13 tion in an appropriate district court of the United
14 States, or any other court of competent jurisdiction,
15 pursuant to section 130 or any other provision of
16 law, for damages or other relief in connection with
17 any alleged violation of this section, any other provi-
18 sion of this title, or any other Federal law.”.

19 (h) PROHIBITION ON EVASIONS.—Section 129 of the
20 Truth in Lending Act (15 U.S.C. 1639) is amended by
21 inserting after subsection (q) (as added by subsection (g)
22 of this section) the following new subsection:

23 “(r) PROHIBITIONS ON EVASIONS, STRUCTURING OF
24 TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—

1 “(1) IN GENERAL.—A creditor may not take
2 any action—

3 “(A) for the purpose or with the intent to
4 circumvent or evade any requirement of this
5 title, including entering into a reciprocal ar-
6 rangement with any other creditor or affiliate of
7 another creditor or dividing a transaction into
8 separate parts, for the purpose of evading or
9 circumventing any such requirement; or

10 “(B) with regard to any other loan or ex-
11 tension of credit for the purpose or with the in-
12 tent to evade the requirements of this title, in-
13 cluding structuring or restructuring a consumer
14 credit transaction as another form of loan, such
15 as a business loan.

16 “(2) OTHER ACTIONS.—In addition to the ac-
17 tions prohibited under paragraph (1), a creditor may
18 not take any action which the Board determines, by
19 regulation, constitutes a bad faith effort to evade or
20 circumvent any requirement of this section with re-
21 gard to a consumer credit transaction.

22 “(3) REGULATIONS.—The Board shall prescribe
23 such regulations as the Board determines to be ap-
24 propriate to prevent circumvention or evasion of the

1 requirements of this section or to facilitate compli-
 2 ance with the requirements of this section.”.

3 **SEC. 5. AMENDMENTS RELATING TO RIGHT OF RESCIS-**
 4 **SION.**

5 (a) **TIMING OF WAIVER BY CONSUMER.**—Section
 6 125(a) of the Truth in Lending Act (15 U.S.C. 1635(a))
 7 is amended—

8 (1) by striking “(a) Except as otherwise pro-
 9 vided” and inserting “(a) **RIGHT ESTABLISHED.**—

10 “(1) **IN GENERAL.**—Except as otherwise pro-
 11 vided”; and

12 (2) by adding at the end the following new
 13 paragraph:

14 “(2) **TIMING OF ELECTION OF WAIVER BY CON-**
 15 **SUMER.**—No election by a consumer to waive the
 16 right established under paragraph (1) to rescind a
 17 transaction shall be effective if—

18 “(A) the waiver was required by the cred-
 19 itor as a condition for the transaction;

20 “(B) the creditor advised or encouraged
 21 the consumer to waive such right of the con-
 22 sumer; or

23 “(C) the creditor had any discussion with
 24 the consumer about a waiver of such right dur-
 25 ing the period beginning when the consumer

1 provides written acknowledgement of the receipt
 2 of the disclosures and the delivery of forms and
 3 information required to be provided to the con-
 4 sumer under paragraph (1) and ending at such
 5 time as the Board determines, by regulation, to
 6 be appropriate.”.

7 (b) NONCOMPLIANCE WITH REQUIREMENTS AS
 8 RECOUPMENT IN FORECLOSURE PROCEEDING.—Section
 9 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e))
 10 is amended by inserting after the 2d sentence the following
 11 new sentence: “This subsection also does not bar a person
 12 from asserting a rescission under section 125, in an action
 13 to collect the debt as a defense to a judicial or nonjudicial
 14 foreclosure after the expiration of the time periods for af-
 15 firmative actions set forth in this section and section
 16 125.”.

17 **SEC. 6. AMENDMENTS TO CIVIL LIABILITY PROVISIONS.**

18 (a) INCREASE IN AMOUNT OF CIVIL MONEY PEN-
 19 ALTIES FOR CERTAIN VIOLATIONS.—Section 130(a) of
 20 the Truth in Lending Act (15 U.S.C. 1640) is amended—

21 (1) in paragraph (2)(A)(iii), by striking
 22 “\$2,000” and inserting “\$10,000”; and
 23 (2) in paragraph (2)(B), by striking “lesser of
 24 \$500,000 or 1 percentum of the net worth of the
 25 creditor” and inserting “the greater of—

1 “(i) the amount determined by multi-
 2 plying the maximum amount of liability
 3 under subparagraph (A) for such failure to
 4 comply in an individual action by the num-
 5 ber of members in the certified class; or

6 “(ii) the amount equal to 2 percent of
 7 the net worth of the creditor.”.

8 (b) STATUTE OF LIMITATIONS EXTENDED FOR SEC-
 9 TION 129 VIOLATIONS.—Section 130(e) of the Truth in
 10 Lending Act (15 U.S.C. 1640(e)) (as amended by section
 11 5(b) of this Act) is amended—

12 (1) in the 1st sentence, by striking “Any ac-
 13 tion” and inserting “Except as provided in the sub-
 14 sequent sentence, any action”; and

15 (2) by inserting after the 1st sentence the fol-
 16 lowing new sentence: “Any action under this section
 17 with respect to any violation of section 129 may be
 18 brought in any United States district court, or in
 19 any other court of competent jurisdiction, before the
 20 end of the 3-year period beginning on the date of the
 21 occurrence of the violation.”.

22 **SEC. 7. AMENDMENT TO FAIR CREDIT REPORTING ACT.**

23 Section 623 of the Fair Credit Reporting Act (15
 24 U.S.C. 1681s–2) is amended by adding at the end the fol-
 25 lowing new subsection:

1 “(e) DUTY OF CREDITORS WITH RESPECT TO HIGH
2 COST MORTGAGES.—

3 “(1) IN GENERAL.—Each creditor who enters
4 into a consumer credit transaction which is a mort-
5 gage referred to in section 103(aa), and each suc-
6 cessor to such creditor with respect to such trans-
7 action, shall report the complete payment history,
8 favorable and unfavorable, of the obligor with re-
9 spect to such transaction to a consumer reporting
10 agency that compiles and maintains files on con-
11 sumers on a nationwide basis at least quarterly, or
12 more frequently as required by regulation or in
13 guidelines established by participants in the sec-
14 ondary mortgage market, while such transaction is
15 in effect.

16 “(2) DEFINITIONS.—For purposes of paragraph
17 (1), the terms ‘credit’ and ‘creditor’ have the same
18 meanings as in section 103.”.

19 **SEC. 8. REGULATIONS.**

20 The Board of Governors of the Federal Reserve Sys-
21 tem shall publish regulations implementing this Act, and
22 the amendments made by this Act, in final form before
23 the end of the 6-month period beginning on the date of
24 the enactment of this Act.

○