

108TH CONGRESS
1ST SESSION

H. R. 2407

To amend the Consumer Credit Protection Act and other banking laws to protect consumers who avail themselves of payday loans from usurious interest rates and exorbitant fees, perpetual debt, the use of criminal actions to collect debts, and other unfair practices by payday lenders, to encourage the States to license and closely regulate payday lenders, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 2003

Mr. RUSH (for himself, Mr. ENGEL, Ms. MILLENDER-McDONALD, Mr. GRIJALVA, Ms. SCHAKOWSKY, Mr. BRADY of Pennsylvania, Mr. THOMPSON of Mississippi, Ms. NORTON, Mr. CUMMINGS, Mr. JEFFERSON, Ms. LEE, Mr. ENGLISH, Mr. OWENS, Mr. GUTIERREZ, Mr. DAVIS of Illinois, Ms. DELAURO, Mr. HINOJOSA, Mr. PRICE of North Carolina, Mr. SANDERS, Mr. MICHAUD, Mr. CONYERS, and Ms. EDDIE BERNICE JOHNSON of Texas) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Consumer Credit Protection Act and other banking laws to protect consumers who avail themselves of payday loans from usurious interest rates and exorbitant fees, perpetual debt, the use of criminal actions to collect debts, and other unfair practices by payday lenders, to encourage the States to license and closely regulate payday lenders, 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 “Payday Borrower Pro-
 5 tection Act of 2003”.

6 **SEC. 2. PAYDAY LOANS PROHIBITED UNLESS AUTHORIZED**
 7 **PURSUANT TO STATE LAW THAT LICENSES**
 8 **AND REGULATES PAYDAY LENDERS.**

9 (a) IN GENERAL.—Section 128 of the Truth in Lend-
 10 ing Act (15 U.S.C. 1638) is amended by adding at the
 11 end the following new subsection:

12 “(e) DEFERRED DEPOSIT LOANS.—

13 “(1) DEFINITIONS.—For purposes of this sub-
 14 section, the following definitions shall apply:

15 “(A) CHECK.—The term ‘check’ means
 16 any negotiable demand draft drawn on or pay-
 17 able through an office of a depository institu-
 18 tion (as defined in section 19(b)(1)(A) of the
 19 Federal Reserve Act) located in the United
 20 States.

21 “(B) DEFERRED DEPOSIT LOAN.—The
 22 term ‘deferred deposit loan’ means a trans-
 23 action in which credit is extended by a payday
 24 lender, for a specified period of time, upon re-
 25 ceipt by the lender of—

1 “(i) a check made by the borrower for
2 the amount of the credit extended, the pre-
3 sentment or negotiation of which, by mu-
4 tual agreement of the lender and borrower,
5 will be deferred for such specified period;
6 or

7 “(ii) authorization from the borrower
8 for the payday lender to initiate an elec-
9 tronic fund transfer at the end of the spec-
10 ified period from the account of the bor-
11 rower for the amount of the credit ex-
12 tended.

13 “(C) PAYDAY LENDER.—The term ‘payday
14 lender’ means any person who extends credit to
15 any other person through a deferred deposit
16 loan.

17 “(2) PAYDAY LOANS PROHIBITED UNLESS AU-
18 THORIZED UNDER STATE LAWS THAT LICENSE AND
19 REGULATE SUCH LENDING.—No person may engage
20 in the business of making deferred deposit loans in
21 any State unless—

22 “(A) expressly authorized to do so under a
23 law of such State that the Board determines at
24 least meets, if not exceeds, all the requirements
25 described in section 4(b) of the Payday Bor-

1 “(A) make any deferred deposit loan, ei-
2 ther directly or through any agent, unless—

3 “(i) such loan is in full compliance
4 with the law of the State in which such
5 loan is made; and

6 “(ii) the annual interest rate applica-
7 ble with respect to such loan is less than
8 36 percent (as determined without taking
9 into account any administrative fee which
10 meets the requirements of section
11 4(b)(7)(E) of the Payday Borrowers Pro-
12 tection Act of 2003); or

13 “(B) make any loan to any payday lender
14 for purposes of financing deferred deposit loans
15 unless the depository institution ascertains that
16 such lender is in full compliance with the Truth
17 in Lending Act, the Electronic Fund Transfer
18 Act, and the law of the State in which any bor-
19 rower from such payday lender will receive the
20 proceeds of any such deferred deposit loan.

21 “(2) SITUS OF LOAN.—For purposes of para-
22 graph (1) and determining compliance with this sub-
23 section, the Truth in Lending Act, the Electronic
24 Fund Transfer Act, and the law of any State, a de-
25 ferred deposit loan shall be considered to be made

1 in the State in which the borrower receives the pro-
2 ceeds of the loan.”.

3 **SEC. 4. STATE LICENSING AND REGULATION OF PAYDAY**
4 **LOANS.**

5 (a) IN GENERAL.—For purposes of protecting the
6 payment system and protecting the consumers of payday
7 loans from fraud, abuse, unfair practices, usurious rates
8 of interest, and exorbitant fees, deferred deposit loans
9 shall only be lawful in States in which laws and regula-
10 tions are in effect that meet the requirements described
11 in subsection (b), as determined by the Board of Gov-
12 ernors of the Federal Reserve System.

13 (b) MINIMUM REQUIREMENTS FOR DEFERRED DE-
14 POSIT LOANS.—The law of any State meets the require-
15 ments of this subsection if a statute in effect in such State
16 includes the following:

17 (1) LICENSING REQUIREMENTS.—

18 (A) IN GENERAL.—Subject to subpara-
19 graphs (B) and (C), a requirement that any
20 payday lender, other than a depository institu-
21 tion (as defined in section 19(b)(1)(A) of the
22 Federal Reserve Act), be licensed and regulated
23 by an appropriate State agency in order to con-
24 duct any business within such State or make

1 any deferred deposit loan within the State (as
2 determined in accordance with paragraph (12)).

3 (B) DEPOSITORY INSTITUTIONS.—A re-
4 quirement that any depository institution which
5 makes deferred deposit loans in such State (as
6 determined in accordance with paragraph (12))
7 shall be subject to such statute and regulated
8 by an appropriate State agency with respect to
9 such lending activity.

10 (2) LICENSING STANDARDS.—A requirement
11 that—

12 (A) in order for any person to be licensed
13 in the State as a payday lender, the appropriate
14 State agency shall review and approve—

15 (i) the business record and the capital
16 adequacy of the business seeking the li-
17 cense; and

18 (ii) the competence, experience, char-
19 acter, integrity, and financial responsibility
20 of each individual who—

21 (I) is a director, officer, or super-
22 visory employee of such business; or

23 (II) owns or controls, directly or
24 indirectly, such business (including
25 any person who directly or indirectly

1 controls more than 5 percent of the
2 shares or assets of the business;

3 (B) any record, on the part of any business
4 seeking the license or any person referred to in
5 subparagraph (A)(ii), of—

6 (i) any criminal activity;

7 (ii) any fraud or other act of personal
8 dishonesty;

9 (iii) any act, omission, or practice
10 which constitutes a breach of a fiduciary
11 duty; or

12 (iv) any suspension or removal, by any
13 agency or department of the United States
14 or any State, from participation in the con-
15 duct of any federally or State licensed or
16 regulated business,

17 be grounds for the denial of any such license by
18 the appropriate State agency;

19 (C) the applicant establish to the satisfac-
20 tion of the appropriate State agency that the
21 operation of the business at each authorized lo-
22 cation is in the public interest, taking into ac-
23 count the probable effect of such operation in
24 promoting the convenience of, and meeting the

1 credit needs of, the community in which such
2 business is conducted;

3 (D) the applicant and licensed payday
4 lender meet such surety bond requirements and
5 minimum asset requirements as may be estab-
6 lished and maintained by the appropriate State
7 agency; and

8 (E) in order for an applicant to meet the
9 requirements of subparagraph (D)—

10 (i) the applicant maintain a minimum
11 of \$50,000 of surety bond coverage for
12 each business location maintained by the
13 applicant; and

14 (ii) the proceeds of any such surety
15 bond coverage be available to pay any con-
16 sumer for any violation of any Federal or
17 State law relating to deferred deposit
18 loans.

19 (3) PUBLIC HEARINGS.—A requirement that
20 any application for a payday lender license be the
21 subject of a public hearing before any final deter-
22 mination is made with regard to such application by
23 the appropriate State agency.

24 (4) ADMINISTRATIVE ACTION.—Authority for
25 the appropriate State agency to issue regulations to

1 carry out the purposes of such statute, investigate
2 and enforce compliance with the statute and such
3 regulations, handle complaints, suspend or revoke li-
4 censes issued to payday lenders and impose civil
5 money penalties for violations of such statute or reg-
6 ulations, and make public the results of any such
7 investigations or enforcement actions and the
8 records of any complaints.

9 (5) REPORTS AND RECORDS.—A requirement
10 that licensed payday lenders—

11 (A) maintain such records as the appro-
12 priate State agency determines are necessary to
13 enforce compliance with the statute; and

14 (B) submit annual reports to the appro-
15 priate State agency containing such information
16 as the agency determines to be appropriate to
17 allow the agency to enforce compliance with the
18 statute and regulations prescribed by the agen-
19 cy under the statute, including a copy of all
20 loan documents used by the payday lender in
21 connection with deferred deposit loans and a fee
22 schedule.

23 (6) PROHIBITIONS.—A prohibition on—

24 (A) the initiation of any criminal action or
25 any civil proceeding, or use of any threat of ini-

1 tiating any such criminal action or civil pro-
2 ceeding, in connection with the failure of any
3 borrower to repay any deferred deposit loan in
4 accordance with the terms of the loan (other
5 than a proceeding directly related to the collec-
6 tion of such debt and actual damages), includ-
7 ing any criminal action or civil proceeding, or a
8 threat of any such action or proceeding, relat-
9 ing to the act of a customer in drawing a check
10 or authorizing an electronic fund transfer which
11 formed the basis for a payday loan and is
12 drawn on an account with insufficient funds;

13 (B) any practice which is prohibited under
14 section 808 of the Fair Debt Collection Prac-
15 tices Act for a debt collector (as defined in such
16 Act);

17 (C) extending credit under any loan agree-
18 ment which includes any terms which are un-
19 conscionable or against the public interest;

20 (D) engaging in any unfair or deceptive
21 practice;

22 (E) accepting the repayment of any de-
23 ferred deposit loan if the payday lender knows
24 or has any reason to believe that the funds

1 proffered by the borrower were acquired from
2 the proceeds of another deferred deposit loan;

3 (F) refinancing or rolling over any deferred
4 deposit loan, or initiating a new deferred de-
5 posit loan unless 30 days has elapsed from the
6 termination of any prior deferred deposit loan
7 from that payday lender (or any affiliate or
8 other associate of the payday lender) to the cus-
9 tomer;

10 (G) imposing any additional fee or any
11 premium for any credit insurance offered in
12 conjunction with any deferred deposit loan; and

13 (H) including any clause in the note or
14 other document related to the deferred deposit
15 loan which requires the consumer to submit any
16 claim or defense relating to the transaction to
17 binding arbitration or other nonjudicial pro-
18 ceeding.

19 (7) REQUIREMENTS RELATING TO TERMS AND
20 CONDITIONS.—A requirement that—

21 (A) the period to maturity of any deferred
22 deposit loan may not be less than 2 weeks for
23 each \$50 of loan principal;

24 (B) the principal amount of any deferred
25 deposit loan may not exceed \$300;

1 (C) any check which forms the basis of a
2 deferred deposit loan be stamped on the back
3 with an endorsement that the check has been
4 received and is being negotiated in connection
5 with a deferred deposit loan and any subse-
6 quent holder of the check takes it subject to all
7 claims and defenses of the maker;

8 (D) the annual interest rate applicable to
9 any deferred deposit loan may not exceed the
10 lesser of—

11 (i) 36 percent; or

12 (ii) the maximum annual percentage
13 rate allowable in such State for comparable
14 small loans;

15 (E) the amount of any administrative fee
16 imposed in connection with making a deferred
17 deposit loan may not exceed \$5;

18 (F) any unearned interest on deferred de-
19 posit loans which are paid before the due date
20 shall be repaid to the borrower on an actuarial
21 basis; and

22 (G) the amount of any fee imposed for any
23 check made or any electronic fund transfer au-
24 thorized by a borrower in connection with any
25 deferred deposit loan which is returned unpaid

1 to the payday lender due to insufficient funds
2 in an account of such borrower may not exceed
3 the lesser of—

4 (i) \$15; or

5 (ii) the charge imposed by the finan-
6 cial institution returning the check to the
7 payday lender for handling such check.

8 (8) DISCLOSURES.—A requirement that the fol-
9 lowing information be disclosed in writing to a bor-
10 rower in connection with any deferred deposit loan
11 and posted in a prominent place at any location
12 where deferred deposit loans are made or extended:

13 (A) A complete description of the terms of
14 the loan.

15 (B) A complete description of the rights of
16 the borrower under the laws of the State, the
17 Truth in Lending Act, the Fair Debt Collection
18 Practices Act, the Electronic Fund Transfer
19 Act, and any other provision of law the appro-
20 priate State agency determines to be applicable
21 to such loan.

22 (C) A clear and conspicuous statement
23 that the borrower may not be subject to any
24 criminal action or civil proceeding, or the use of
25 any threat of initiating any such criminal action

1 or civil proceeding, in connection with the fail-
2 ure of any borrower to repay any deferred de-
3 posit loan in accordance with the terms of the
4 loan (other than a proceeding directly related to
5 the collection of such debt and actual damages),
6 including any criminal action or civil pro-
7 ceeding, or a threat of any such action or pro-
8 ceeding, relating to the act of a customer in
9 drawing a check or authorizing an electronic
10 fund transfer which formed the basis for a pay-
11 day loan and is drawn on an account with in-
12 sufficient funds.

13 (9) CIVIL ENFORCEMENT.—Provision for civil
14 penalties for violations of the statute with a min-
15 imum civil money penalty of \$1,000 for any violation
16 of the statute by any payday lender.

17 (10) PRIVATE RIGHT OF ACTION.—Provisions
18 that make any person who violates any provision of
19 the statute with respect to any other person liable to
20 such other person, or to a class of such other per-
21 sons, for actual, consequential, and punitive dam-
22 ages, statutory damages of \$1,000 for each violation,
23 and costs and attorney’s fees.

24 (11) CRIMINAL PENALTIES FOR OPERATION OF
25 BUSINESS WITHOUT A LICENSE.—A criminal penalty

1 for anyone, other than a depository institution, mak-
2 ing any payday loan within the State after the effec-
3 tive date of such State statute without a license
4 issued by the State.

5 (12) CRIMINAL PENALTIES FOR OTHER VIOLA-
6 TIONS OF THE STATUTE.—A provision that any per-
7 son who knowingly violates any provision of the stat-
8 ute, or any regulation prescribed under the statute,
9 shall be subject to a fine of \$1,000, imprisonment
10 for not to exceed 6 months, or both.

11 (13) SITUS OF LOAN.—A deferred deposit loan
12 is considered to be made in the State in which the
13 borrower will receive the proceeds of the loan.

14 (c) DEFINITIONS.—For purposes of this section, the
15 following definitions shall apply:

16 (1) DEPOSITORY INSTITUTION.—The term “de-
17 pository institution” has the meaning given to such
18 term in section 19(b)(1)(A) of the Federal Reserve
19 Act.

20 (2) OTHER TERMS.—The terms “deferred de-
21 posit loan”, “payday lender”, and “check” have the
22 meanings given to such terms in section 128(e)(1) of
23 the Truth in Lending Act.

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