

108TH CONGRESS
2D SESSION

S. 2973

To clarify the applicability of State law to national banks, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 9, 2004

Mr. CORZINE (for himself, Mrs. BOXER, Mrs. MURRAY, Mr. SCHUMER, Mr. LAUTENBERG, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To clarify the applicability of State law to national banks, 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 “Preservation of Fed-
5 eralism in Banking Act”.

6 **SEC. 2. STATE LAW PREEMPTION STANDARDS FOR NA-**
7 **TIONAL BANKS CLARIFIED.**

8 (a) IN GENERAL.—Chapter 1 of title LXII of the Re-
9 vised Statutes of the United States (12 U.S.C. 21 et seq.)

1 is amended by inserting after section 5136B (12 U.S.C.
2 25a) the following new section:

3 **“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NA-**
4 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
5 **FIED.**

6 “(a) STATE CONSUMER LAWS OF GENERAL APPLI-
7 CATION.—

8 “(1) IN GENERAL.—Notwithstanding any other
9 provision of Federal law, any State consumer law of
10 general application (including any law relating to
11 unfair or deceptive acts or practices and any con-
12 sumer fraud law) shall apply to any national bank.

13 “(2) NATIONAL BANK DEFINED.—For purposes
14 of this section, the term ‘national bank’ includes any
15 Federal branch established in accordance with the
16 International Banking Act of 1978.

17 “(b) STATE BANKING LAWS ENACTED PURSUANT TO
18 FEDERAL LAW.—

19 “(1) IN GENERAL.—Notwithstanding any other
20 provision of Federal law and except as provided in
21 paragraph (2), any State law that—

22 “(A) is applicable to State banks; and

23 “(B) was enacted pursuant to or in accord-
24 ance with, and is consistent with, an Act of
25 Congress, including the Gramm-Leach-Bliley

1 Act and the Consumer Credit Protection Act,
2 that permits States to exceed or supplement the
3 requirements of any comparable Federal law,
4 shall apply to any national bank.

5 “(2) EXCEPTIONS.—Paragraph (1) shall not
6 apply with respect to any State law if—

7 “(A) the State law discriminates against
8 national banks; or

9 “(B) the State law is inconsistent with
10 other provisions of Federal law, but only to the
11 extent of the inconsistency (as determined in
12 accordance with the other provision of Federal
13 law).

14 “(c) NO NEGATIVE IMPLICATIONS FOR APPLICA-
15 BILITY OF OTHER STATE LAWS.—No provision of this
16 section shall be construed as altering or affecting the ap-
17 plicability, to national banks, of any State law which is
18 not described in subsection (a) or (b).”.

19 (b) DENIAL OF PREEMPTION NOT A DEPRIVATION
20 OF A CIVIL RIGHT.—The preemption of any provision of
21 the laws of any State with respect to any national bank
22 shall not be treated as a right, privilege, or immunity for
23 purposes of section 1979 of the Revised Statutes of the
24 United States (42 U.S.C. 1983).

1 (c) CLERICAL AMENDMENT.—The table of sections
 2 for chapter 1 of title LXII of the Revised Statutes of the
 3 United States, is amended by inserting after the item re-
 4 lating to section 5136B the following new item:

“5136C. State law preemption standards for national banks and subsidiaries clarified.”.

5 **SEC. 3. VISITORIAL STANDARDS.**

6 Section 5136C of the Revised Statutes of the United
 7 States (as added by section 2(a) of this Act) is amended
 8 by adding at the end the following new subsection:

9 “(d) VISITORIAL POWERS.—No provision of this title
 10 which relates to visitorial powers or otherwise limits or re-
 11 stricts the supervisory, examination, or regulatory author-
 12 ity to which any national bank is subject shall be con-
 13 strued as limiting or restricting the authority of any attor-
 14 ney general (or other chief law enforcement officer) of any
 15 State to bring any action in any court of appropriate juris-
 16 diction—

17 “(1) to enforce any applicable Federal or State
 18 law, as authorized by such law; or

19 “(2) on behalf of residents of such State, to en-
 20 force any applicable provision of any Federal or
 21 State law against a national bank, as authorized by
 22 such law, or to seek relief and recover damages for
 23 such residents from any violation of any such law by
 24 any national bank.”.

1 **SEC. 4. CLARIFICATION OF LAW APPLICABLE TO STATE-**
 2 **CHARTERED NONDEPOSITORY INSTITUTION**
 3 **SUBSIDIARIES.**

4 Section 5136C of the Revised Statutes of the United
 5 States (as added and amended by this Act) is amended
 6 by adding at the end the following new subsection:

7 “(e) CLARIFICATION OF LAW APPLICABLE TO NON-
 8 DEPOSITORY INSTITUTION SUBSIDIARIES OF NATIONAL
 9 BANKS.—

10 “(1) IN GENERAL.—No provision of this title
 11 shall be construed as preempting the applicability of
 12 State law to any State-chartered nondepository insti-
 13 tution subsidiary of a national bank, except to the
 14 extent that the preemption is explicitly provided by
 15 an Act of Congress.

16 “(2) DEFINITIONS.—For purposes of this sub-
 17 section, the terms ‘depository institution’ and ‘sub-
 18 sidiary’ have the same meanings as in section 3 of
 19 the Federal Deposit Insurance Act.”.

20 **SEC. 5. DATA COLLECTION AND REPORTING.**

21 (a) COLLECTING AND MONITORING CONSUMER COM-
 22 PLAINTS.—

23 (1) IN GENERAL.—The Comptroller of the Cur-
 24 rency shall record and monitor each complaint re-
 25 ceived directly or indirectly from a consumer regard-

1 ing a national bank or any subsidiary of a national
2 bank and record the resolution of the complaint.

3 (2) FACTORS TO BE INCLUDED.—In carrying
4 out the requirements of paragraph (1), the Comp-
5 troller of the Currency shall include—

6 (A) the date on which the consumer com-
7 plaint was received;

8 (B) the nature of the complaint;

9 (C) when and how the complaint was re-
10 solved, including a brief description of the ex-
11 tent, and the results, of the investigation made
12 by the Comptroller into the complaint, a brief
13 description of any notices given and inquiries
14 made to any other Federal or State officer or
15 agency in the course of the investigation or res-
16 olution of the complaint, a summary of the en-
17 forcement action taken upon completion of the
18 investigation, and a summary of the results of
19 subsequent periodic reviews by the Comptroller
20 of the extent and nature of compliance by such
21 national bank or subsidiary with the enforce-
22 ment action; and

23 (D) if the complaint involves any alleged
24 violation of a State law (whether or not Federal
25 law preempts the application of such State law

1 to such national bank) by such bank, a cite to
2 and a description of the State law that formed
3 the basis of the complaint.

4 (b) REPORT TO THE CONGRESS.—

5 (1) PERIODIC REPORTS REQUIRED.—The
6 Comptroller of the Currency shall submit a report
7 semi-annually to the Congress on the consumer pro-
8 tection efforts of the Office of the Comptroller of the
9 Currency.

10 (2) CONTENTS OF REPORT.—Each report sub-
11 mitted under paragraph (1) shall include the fol-
12 lowing:

13 (A) The total number of consumer com-
14 plaints received by the Comptroller during the
15 period covered by the report with respect to al-
16 leged violations of consumer protection laws by
17 national banks and subsidiaries of national
18 banks.

19 (B) The total number of consumer com-
20 plaints received during the reporting period that
21 are based on each of the following:

22 (i) Each title of the Consumer Credit
23 Protection Act (reported as a separate ag-
24 gregate number for each such title).

25 (ii) The Truth in Savings Act.

- 1 (iii) The Right to Financial Privacy
2 Act of 1978.
- 3 (iv) The Expedited Funds Availability
4 Act.
- 5 (v) The Community Reinvestment Act
6 of 1977.
- 7 (vi) The Bank Protection Act of 1968.
- 8 (vii) Title LXII of the Revised Stat-
9 utes of the United States.
- 10 (viii) The Federal Deposit Insurance
11 Act.
- 12 (ix) The Real Estate Settlement Pro-
13 cedures Act of 1974
- 14 (x) The Home Mortgage Disclosure
15 Act of 1975.
- 16 (xi) Any other Federal law.
- 17 (xii) State consumer protection laws
18 (reported as a separate aggregate number
19 for each State and each State consumer
20 protection law).
- 21 (xiii) Any other State law (reported
22 separately for each State and each State
23 law).

1 (C) A summary description of the resolu-
2 tion efforts by the Comptroller for complaints
3 received during the period covered, including—

4 (i) the average amount of time to re-
5 solve each complaint;

6 (ii) the median period of time to re-
7 solve each complaint;

8 (iii) the average and median time to
9 resolve complaints in each category of com-
10 plaints described in each clause of sub-
11 paragraph (B); and

12 (iv) a summary description of the
13 longest outstanding complaint during the
14 reporting period and the reason for the dif-
15 ficulty in resolving such complaint in a
16 more timely fashion.

17 (3) DISCLOSURE OF REPORT ON OCC
18 WEBSITE.—Each report submitted to the Congress
19 under this subsection shall be posted by the Comp-
20 troller of the Currency in a timely fashion, and
21 maintained on the website of the Office of the
22 Comptroller of the Currency on the World Wide
23 Web.

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