

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3153

To protect home ownership and equity through enhanced disclosure of the risks associated with certain mortgages, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 1993

Mr. KENNEDY (for himself, Mr. GONZALEZ, Mr. MOAKLEY, Mr. SCHUMER, Mr. FRANK of Massachusetts, Mr. KANJORSKI, Mr. FLAKE, Ms. WATERS, Mr. HINCHEY, Mr. KLEIN, Mr. WATT, Ms. ROYBAL-ALLARD, Mr. RUSH, Mr. WYNN, Ms. BROWN of Florida, Mr. FILNER, Mr. HAMBURG, Ms. WOOLSEY, Mr. NEAL of Massachusetts, Mr. MEEHAN, Mr. COYNE, Mr. LEWIS of Georgia, Mr. CLAY, Mr. LANTOS, and Mr. DEFazio) introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

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## A BILL

To protect home ownership and equity through enhanced disclosure of the risks associated with certain mortgages, 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 “Home Equity Protec-  
5       tion Act of 1993”.

1 **SEC. 2. CONSUMER PROTECTIONS FOR HIGH COST MORT-**  
2 **GAGES.**

3 (a) DEFINITION.—Section 103 of the Truth in Lend-  
4 ing Act (15 U.S.C. 1602) is amended by adding after sub-  
5 section (z) the following new subsection:

6 “(aa) The term ‘high cost mortgage’ means a  
7 consumer credit transaction, other than a residential  
8 mortgage transaction, that is secured by a consumer’s  
9 principal dwelling and that satisfies at least 1 of the fol-  
10 lowing conditions:

11 “(1) The annual percentage rate at consumma-  
12 tion of the transaction will exceed by more than 10  
13 percentage points the rate of interest on obligations  
14 of the United States having a period of maturity of  
15 1 year on the fifteenth day of the month before such  
16 consummation.

17 “(2) All points and fees payable by the  
18 consumer at or before closing will exceed the greater  
19 of—

20 “(A) 8 percent of the amount financed,  
21 minus fees and points; or

22 “(B) \$400.”.

23 (b) MATERIAL DISCLOSURES.—Section 103(u) of the  
24 Truth in Lending Act (15 U.S.C. 1602(u)) is amended—

25 (1) by striking “and the due dates” and insert-  
26 ing “, the due dates”; and

1           (2) by inserting before the period “, and the  
2           disclosures for high cost mortgages required by sec-  
3           tion 129(a)”.

4           (c) DEFINITION OF CREDITOR CLARIFIED.—Section  
5           103(f) of the Truth in Lending Act (15 U.S.C. 1602(f))  
6           is amended by adding at the end the following: “Any per-  
7           son who originates 2 or more high cost mortgages in any  
8           12-month period or any person who originates 1 or more  
9           high cost mortgages through a loan broker shall be consid-  
10          ered to be a creditor for purposes of section 129.”.

11          (d) DISCLOSURES REQUIRED AND CERTAIN TERMS  
12          PROHIBITED.—The Truth in Lending Act (15 U.S.C.  
13          1601 et seq.) is amended by inserting after section 128  
14          the following new section:

15          **“SEC. 129. REQUIREMENTS FOR HIGH COST MORTGAGES.**

16          “(a) DISCLOSURES.—In addition to any other disclo-  
17          sures required under this title, for each high cost mort-  
18          gage, the creditor shall provide the following written dis-  
19          closures in clear language and in conspicuous type size  
20          and format, segregated from other information as a sepa-  
21          rate document:

22                  “(1) The following statement: ‘If you obtain  
23                  this loan, the lender will have a mortgage on your  
24                  home. You could lose your home, and any money you

1 have put into it, if you do not meet your obligations  
2 under the loan.’.

3 “(2) The initial annual percentage rate.

4 “(3) The consumer’s gross monthly cash in-  
5 come, as verified by the creditor, the total initial  
6 monthly payment, and the amount of funds that will  
7 remain to meet other obligations of the consumer.

8 “(4) In the case of a variable rate loan, a state-  
9 ment that the annual percentage rate and the inter-  
10 est rate could increase, and the maximum interest  
11 rate and payment.

12 “(5) In the case of a variable rate loan with an  
13 initial annual percentage rate that is different than  
14 the one which would be applied using the contract  
15 index after the initial period, a statement of the pe-  
16 riod of time the initial rate will be in effect, and the  
17 rate or rates that will go into effect after the initial  
18 period is over, assuming that current interest rates  
19 prevail.

20 “(6) A statement that the consumer is not re-  
21 quired to complete the transaction merely because he  
22 or she has received disclosures or signed a loan ap-  
23 plication.

1           “(7) A statement as follows: ‘Under Federal  
2           law, this is a high cost mortgage. You may be able  
3           to obtain a less expensive loan.’.

4           “(b) TIME OF DISCLOSURES.—The disclosures re-  
5           quired by this section shall be given no later than 3 busi-  
6           ness days prior to consummation of the transaction. A  
7           creditor may not change the terms of the loan after pro-  
8           viding the disclosures required by this section.

9           “(c) NO PREPAYMENT PENALTY.—

10           “(1) IN GENERAL.—A high cost mortgage may  
11           not contain terms under which a consumer must pay  
12           a prepayment penalty for paying all or part of the  
13           principal prior to the date on which such principal  
14           is due. If the date of maturity of the high cost mort-  
15           gage is accelerated for any reason, the consumer is  
16           entitled to a rebate that complies with paragraph  
17           (2). No high cost mortgage shall provide for a de-  
18           fault interest rate that is higher than the interest  
19           rate provided by the note for a performing loan.

20           “(2) REBATE COMPUTATION.—For purposes of  
21           this subsection, any method of computing rebates of  
22           a finance charge less favorable to the consumer than  
23           the actuarial method using simple interest is a pre-  
24           payment penalty.

1           “(3) CERTAIN OTHER FEES PROHIBITED.—An  
2 agreement to refinance a high cost mortgage by the  
3 same creditor or an affiliate of the creditor may not  
4 require the consumer to pay points, discount fees, or  
5 prepaid finance charges on the portion of the loan  
6 refinanced. For the purpose of this paragraph, the  
7 term ‘affiliate’ has the same meaning as it does in  
8 section 2(k) of the Bank Holding Company Act of  
9 1956.

10          “(d) NO BALLOON PAYMENTS.—A high cost mort-  
11 gage may not include terms under which the aggregate  
12 amount of the regular periodic payments would not fully  
13 amortize the outstanding principal balance.

14          “(e) NO NEGATIVE AMORTIZATION.—A high cost  
15 mortgage may not include terms under which the out-  
16 standing principal balance will increase over the course of  
17 the loan.

18          “(f) NO PREPAID PAYMENTS.—A high cost mortgage  
19 may not include terms under which more than 2 periodic  
20 payments required under the loan are consolidated and  
21 paid in advance from the loan proceeds provided to the  
22 consumer.

23          “(g) UNFAIR, DECEPTIVE, OR EVASIVE ACTS PRO-  
24 HIBITED.—Creditors of contracts governed by this section  
25 shall not commit, in the making, servicing, or collecting

1 of a high cost mortgage, any act or practice which is un-  
2 fair or deceptive, including any of the following:

3           “(1) Entering into a home equity loan if there  
4           is no reasonable probability that the homeowner will  
5           be able to make payments according to the terms of  
6           the loan.

7           “(2) Taking advantage of the borrower’s infir-  
8           mities, lack of education or sophistication, or lan-  
9           guage skills, necessary to understand fully the terms  
10          of the transaction.

11          “(3) Refinancing other loans owed by the home-  
12          owner which had not been accelerated by reason of  
13          default of the homeowner prior to the application for  
14          the home equity loan, unless the new loan is at a  
15          lower interest rate or has lower monthly payments.

16          “(4) Financing a mortgage broker’s commis-  
17          sion, unless the borrower entered into a separate  
18          written contract with the broker prior to the date of  
19          application for the home equity loan, which stated  
20          the dollar amount of the commission, and which was  
21          provided to the borrower prior to the application.

22          “(5) Taking action or interfering with any  
23          other consumer protection laws or regulation de-  
24          signed to protect the homeowner.

1           “(6) Assisting in the falsification of information  
2           on the application for a home equity loan.

3           “(7) Disbursing to a home improvement con-  
4           tractor more than 80 percent of funds due under a  
5           home improvement contract which exceeds \$10,000,  
6           before the completion of the work due under the  
7           home improvement contract, or making any dis-  
8           bursement for a home improvement contract in a  
9           form other than an instrument jointly payable to the  
10          borrower and the contractor.

11          “(8)(A) Engaging in any other unfair, decep-  
12          tive, or unconscionable conduct which creates a like-  
13          lihood of confusion or misunderstanding.

14          “(B) Any attempt to evade the provisions of  
15          this section by any devise, subterfuge, or pretense  
16          whatsoever is deemed to be unfair conduct under  
17          this paragraph.

18          “(h) RIGHT OF RESCISSION.—For the purpose of sec-  
19          tion 125, any contract with provisions prohibited by this  
20          section is deemed to not include material disclosures re-  
21          quired under this title. Any provision in a high cost mort-  
22          gage which violates section 125 shall not be enforceable.”.

1 **SEC. 3. STATE AUTHORITY TO REGULATE HIGH RATE**  
2 **MORTGAGE LOANS.**

3 The authority of States to establish limitations on the  
4 interest, fees, and other terms of a first mortgage which—

5 (1) is secured by a first lien on residential real  
6 property; and

7 (2) is not used to finance the acquisition of that  
8 property;

9 is not preempted by section 501 of the Depository Institu-  
10 tions Deregulation and Monetary Control Act of 1980 (12  
11 U.S.C. 1735f-7a) or the Alternative Mortgage Trans-  
12 action Parity Act of 1982 (12 U.S.C. 3801 et seq.).

13 **SEC. 4. CIVIL LIABILITY.**

14 (a) DAMAGES.—Section 130(a) of the Truth in Lend-  
15 ing Act (15 U.S.C. 1640(a)) is amended—

16 (1) by striking “and” at the end of paragraph  
17 (2)(B);

18 (2) by striking the period at the end of para-  
19 graph (3) and inserting “; and”; and

20 (3) by inserting after paragraph (3) the follow-  
21 ing new paragraph:

22 “(4) in case of a failure to comply with any re-  
23 quirement under section 129, all finance charges and  
24 fees.”.

25 (b) STATE ATTORNEY GENERAL ENFORCEMENT.—  
26 Section 130(e) of the Truth in Lending Act (15 U.S.C.

1 1640(e)) is amended by adding at the end the following:  
2 “An action to enforce a violation of section 129 may also  
3 be brought by the appropriate State attorney general in  
4 a court of competent jurisdiction, within 5 years after the  
5 date on which the violation occurs.”.

6 (c) ASSIGNEE LIABILITY.—Section 131 of the Truth  
7 in Lending Act (15 U.S.C. 1641) is amended by adding  
8 at the end the following new subsection:

9 “(d) HIGH COST MORTGAGES.—

10 “(1) IN GENERAL.—In addition to any other li-  
11 ability imposed under this title, any person who pur-  
12 chases or is otherwise assigned a high cost mortgage  
13 shall be subject to all claims and defenses with re-  
14 spect to the mortgage that the consumer could as-  
15 sert against the creditor of the mortgage.

16 “(2) DAMAGES.—Relief under this subsection  
17 shall be limited to the sum of—

18 “(A) an offset of all remaining indebted-  
19 ness; and

20 “(B) the total amount paid by the  
21 consumer in connection with the transaction.

22 “(3) NOTICE.—Any person who sells or other-  
23 wise assigns a high cost mortgage shall include a  
24 prominent notice of the potential liability under this  
25 subsection as determined by the Board.”.

1 **SEC. 5. EFFECTIVE DATE.**

2       This Act shall be effective 60 days after the promul-  
3 gation of regulations by the Board of Governors of the  
4 Federal Reserve System, which shall occur not later than  
5 180 days following the date of enactment of this Act.

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