

107<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1055

To amend the Federal Deposit Insurance Act and the Truth in Lending Act to prohibit federally insured institutions from engaging in high-cost payday loans, to expand protections for consumers in connection with the making of such loans by uninsured entities, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2001

Mr. LAFALCE (for himself, Mr. KANJORSKI, Mrs. MALONEY of New York, Mr. GUTIERREZ, Ms. LEE, Mrs. JONES of Ohio, Mr. CAPUANO, Mr. CLAY, Mr. HINCHEY, and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To amend the Federal Deposit Insurance Act and the Truth in Lending Act to prohibit federally insured institutions from engaging in high-cost payday loans, to expand protections for consumers in connection with the making of such loans by uninsured entities, 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 “Federal Payday Loan  
5 Consumer Protection Amendments of 2001”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress makes the following  
3 findings:

4 (1) Payday lending is a rapidly expanding form  
5 of high-cost, short-term credit that uses a borrower's  
6 personal check as collateral and targets individuals  
7 with limited access to affordable credit who are in  
8 desperate need of cash to meet immediate obliga-  
9 tions.

10 (2) Consumer group studies indicate that the  
11 average annual percentage rate on payday loans na-  
12 tionally is 474 percent for a two-week loan, and that  
13 a typical payday loan is renewed ten or more times  
14 before repayment at equivalent annual interest rates  
15 that exceed 1000 percent.

16 (3) While State law has traditionally prohibited  
17 such high cost lending through usury limits, small  
18 loan interest caps and other restrictions, these laws  
19 have either been revised to exempt payday loan  
20 transactions, or payday lenders have affiliated with  
21 insured depository institutions to invoke the most fa-  
22 vored lender principle under Federal law to cir-  
23 cumvent interest rate regulation in State law.

24 (4) Lending that fails to assess borrowers abil-  
25 ity to repay, that requires consumers to write checks  
26 on insufficient funds, that encourages perpetual debt

1 or default on other obligations, and that facilitates  
2 violations of State law, is an unacceptable banking  
3 practice for insured depository institutions that  
4 threatens the safety of the participating institution  
5 and the broader banking system.

6 (5) While Congress clearly intended for the  
7 credit protections of the Truth in Lending Act to  
8 apply broadly to all credit transactions, including  
9 payday loan transactions, and such application to  
10 payday loan transactions has been correctly affirmed  
11 in recent court decisions, the provision of Truth in  
12 Lending credit disclosures is not standard practice  
13 among payday lenders across the country and should  
14 be a more explicit requirement in Federal statutes  
15 and regulations.

16 (b) PURPOSE.—It is the purpose of this Act to en-  
17 courage fair lending practices by prohibiting insured de-  
18 pository institutions from engaging in any form of payday  
19 lending, by restricting the use of personal checks drawn  
20 on, or forms of withdrawals from, accounts at insured de-  
21 pository institutions for purposes of making payday loans,  
22 and by clarifying what the Congress has always intended  
23 by explicitly stating in the Truth in Lending Act that ap-  
24 propriate interest rate disclosure and other consumer pro-  
25 tections of the Act do apply to all payday loans.

1 **SEC. 3. FEDERAL DEPOSIT INSURANCE ACT AMENDMENT.**

2 Section 18 of the Federal Deposit Insurance Act (12  
3 U.S.C. 1828) is amended by adding at the end the fol-  
4 lowing new subsection:

5 “(v) PROHIBITION ON CERTAIN UNSAFE AND UN-  
6 SOUND BANKING PRACTICES.—

7 “(1) IN GENERAL.—An insured depository in-  
8 stitution may not—

9 “(A) make any payday loan, either directly  
10 or indirectly; or

11 “(B) make any loan to any other lender  
12 for purposes of financing a payday loan or refi-  
13 nancing or extending any payday loan.

14 “(2) PAYDAY LOAN DEFINED.—For purposes of  
15 this subsection, the term ‘payday loan’ means any  
16 transaction in which a short-term cash advance is  
17 made to a consumer in exchange for—

18 “(i) a consumer’s personal check or  
19 share draft, in the amount of the advance  
20 plus a fee, where presentment or negotia-  
21 tion of such check or share draft is de-  
22 ferred by agreement of the parties until a  
23 designated future date; or

24 “(ii) a consumer’s authorization to  
25 debit the consumer’s transaction account,  
26 in the amount of the advance plus a fee,

1                   where such account will be debited on or  
2                   after a designated future date.”.

3 **SEC. 4. TRUTH IN LENDING ACT AMENDMENTS.**

4           (a) CLARIFICATION OF APPLICATION TO PAYDAY  
5 LOANS.—For purposes of clarifying that payday loans  
6 have always been within the definition of credit, section  
7 103(e) of the Consumer Credit Protection Act (15 U.S.C.  
8 1602(e)) is amended, effective as of the date of the enact-  
9 ment of this Act, by inserting before the period at the end  
10 “, including any payday loan (as defined in section  
11 18(v)(2) of the Federal Deposit Insurance Act)”.

12           (b) PROHIBITION ON CERTAIN UNSAFE AND UN-  
13 SOUND LENDING PRACTICES.—Section 128 of the Truth  
14 in Lending Act (15 U.S.C. 1638) is amended by adding  
15 at the end the following new subsection:

16           “(e) PROHIBITION ON PAYDAY LOANS BASED ON  
17 CHECKS DRAWN ON, OR AUTHORIZED WITHDRAWALS  
18 FROM, INSURED DEPOSITORY INSTITUTIONS.—

19                   “(1) IN GENERAL.—A creditor may not make a  
20           payday loan to any person if the creditor knows or  
21           has reasonable cause to believe that—

22                           “(A) the personal check or share draft the  
23           creditor receives from the person, in exchange  
24           for the loan, is drawn on an insured depository  
25           institution or insured credit union; or

1           “(B) the account the creditor receives per-  
2           mission from the person to debit, in exchange  
3           for the loan, is a transaction account or share  
4           draft account at an insured depository institu-  
5           tion or an insured credit union.

6           “(2) DEFINITIONS.—For purposes of this sub-  
7           section, the following definitions shall apply:

8           “(A) INSURED CREDIT UNION.—The term  
9           ‘insured credit union’ has the meaning given  
10          the term in section 101 of the Federal Credit  
11          Union Act.

12          “(B) INSURED DEPOSITORY INSTITU-  
13          TION.—The term ‘insured depository institu-  
14          tion’ has the meaning given the term in section  
15          3 of the Federal Deposit Insurance Act.

16          “(C) PAYDAY LOAN DEFINED.—The term  
17          ‘payday loan’ means any transaction in which a  
18          short-term cash advance is made to a consumer  
19          in exchange for—

20                 “(i) a consumer’s personal check or  
21                 share draft, in the amount of the advance  
22                 plus a fee, where presentment or negotia-  
23                 tion of such check or share draft is de-  
24                 ferred by agreement of the parties until a  
25                 designated future date; or

1           “(ii) a consumer’s authorization to  
2           debit the consumer’s transaction or share  
3           draft account, in the amount of the ad-  
4           vance plus a fee, where such account will  
5           be debited on or after a designated future  
6           date.”.

7           (c) CIVIL LIABILITY.—

8           (1) IN GENERAL.—Section 130(a)(2) of the  
9           Truth in Lending Act (15 U.S.C. 1640(a)(2)) is  
10          amended—

11           (A) in subparagraph (A)—

12           (i) by inserting “clauses (i) and (ii)  
13           of” after “except that the liability under”;

14           (ii) by striking “\$100” and inserting  
15           “\$200”; and

16           (iii) by striking “\$1,000” and insert-  
17           ing “\$10,000”; and

18           (B) in subparagraph (B), by striking “less-  
19           er of \$500,000 or 1 per centum of the net  
20           worth of the creditor” and inserting “greater  
21           of—

22           “(i) the amount determined by multi-  
23           plying the maximum amount of liability  
24           subparagraph (A) for each such failure to

1                   comply in an individual action by the num-  
2                   ber of members in the certified class; or

3                   “(ii) the amount equal to 2 percent of  
4                   the creditor”.

5                   (2) TECHNICAL AND CONFORMING AMEND-  
6                   MENTS.—Section 130(a) of the Truth in Lending  
7                   Act is amended—

8                   (A) in the matter preceding paragraph (1),  
9                   by striking “equal to the sum of—” and insert-  
10                  ing “equal to the sum of amounts determined  
11                  under the following paragraphs, whichever  
12                  apply:”; and

13                  (B) in the 4th sentence which begins after  
14                  the end of paragraph (4) by striking “disclo-  
15                  sures referred to in section 128” and inserting  
16                  “disclosures referred to in section 128(a)”.

17 **SEC. 5. EFFECTIVE DATE.**

18                  Except as provided in section 4(a), which is a clari-  
19                  fication of existing law, the requirements of this Act and  
20                  the amendments made by this Act shall take effect at the  
21                  end of the 90-day period beginning on the date of the en-  
22                  actment of this Act and shall apply to payday loans initi-  
23                  ated on or after such date and to an extension or renewal  
24                  of a payday loan made on or after such date.

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