

114TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To amend the Truth in Lending Act to address certain issues related to the extension of consumer credit, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

Mr. MERKLEY (for himself, Mr. UDALL, Mr. SANDERS, Mr. FRANKEN, Mrs. MURRAY, Mr. WYDEN, Mr. DURBIN, Mr. BLUMENTHAL, Ms. WARREN, Ms. BALDWIN, and Mr. MARKEY) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend the Truth in Lending Act to address certain issues related to the extension of consumer credit, 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 “Stopping Abuse and  
5 Fraud in Electronic Lending Act of 2016” or the “SAFE  
6 Lending Act of 2016”.

7 **SEC. 2. CONSUMER CONTROL OVER BANK ACCOUNTS.**

8 (a) PROHIBITING UNAUTHORIZED REMOTELY CRE-  
9 ATED CHECKS.—Section 905 of the Electronic Fund

1 Transfer Act (15 U.S.C. 1693c) is amended by adding at  
2 the end the following:

3 “(d) LIMITATIONS ON REMOTELY CREATED  
4 CHECKS.—

5 “(1) DEFINITION.—In this subsection, the term  
6 ‘remotely created check’ means a check, including a  
7 paper or electronic check and any other payment  
8 order that the Bureau, by rule, determines is appro-  
9 priately covered by this subsection, that—

10 “(A) is not created by the financial institu-  
11 tion that holds the customer account from  
12 which the check is to be paid; and

13 “(B) does not bear a signature applied, or  
14 purported to be applied, by the person from  
15 whose account the check is to be paid.

16 “(2) LIMITATIONS.—Subject to the limitations  
17 in paragraph (3) and any additional limitations that  
18 the Bureau may establish, by rule, a remotely cre-  
19 ated check may only be issued by a person des-  
20 ignated in writing by the consumer with the designa-  
21 tion specifically provided in writing by the consumer  
22 to the insured depository institution at which the  
23 consumer maintains the account from which the  
24 check is to be drawn.

25 “(3) ADDITIONAL LIMITATIONS.—

1           “(A) IN GENERAL.—An authorization pro-  
2           vided under paragraph (2) may be revoked at  
3           any time by the consumer.

4           “(B) CONSUMER FINANCIAL PROTECTION  
5           LAWS.—No payment order, including a re-  
6           motely created check, may be issued by any per-  
7           son in response to the exercise of, or attempt to  
8           exercise, any rights by a consumer under any  
9           Federal consumer financial law, as defined in  
10          section 1002 of the Consumer Financial Protec-  
11          tion Act of 2010 (12 U.S.C. 5481), or any  
12          other provision of any law or regulation within  
13          the jurisdiction of the Bureau.”.

14          (b) CONSUMER PROTECTIONS FOR CERTAIN ONE-  
15          TIME ELECTRONIC FUND TRANSFERS.—Section 913 of  
16          the Electronic Fund Transfer Act (15 U.S.C. 1693k) is  
17          amended—

18                 (1) by inserting “(a) IN GENERAL.—” before  
19                 “‘No person’”;

20                 (2) in subsection (a)(1), as so designated, by  
21                 striking “preauthorized electronic fund transfers”  
22                 and inserting “an electronic fund transfer”; and

23                 (3) by adding at the end the following:

24                 “(b) TREATMENT FOR ELECTRONIC FUND TRANS-  
25          FERS IN CREDIT EXTENSIONS.—If a consumer voluntarily

1 agrees to repay an extension of a small-dollar consumer  
2 credit transaction, as defined in section 110(a) of the  
3 Truth in Lending Act, by means of an electronic fund  
4 transfer, the electronic fund transfer shall be treated as  
5 a preauthorized electronic fund transfer subject to the pro-  
6 tections of this title.”.

7 **SEC. 3. TRANSPARENCY AND CONSUMER EMPOWERMENT**  
8 **IN SMALL-DOLLAR LENDING.**

9 (a) **SMALL-DOLLAR CONSUMER CREDIT TRANS-**  
10 **ACTIONS.**—The Truth in Lending Act (15 U.S.C. 1601  
11 et seq.) is amended—

12 (1) by inserting after section 109 (15 U.S.C.  
13 1608) the following:

14 **“SEC. 110. REGISTRATION REQUIREMENT FOR SMALL-DOL-**  
15 **LAR LENDERS.**

16 “(a) **DEFINITION.**—In this section, the term ‘small-  
17 dollar consumer credit transaction’ means any transaction  
18 that extends, facilitates, brokers, arranges, or gathers ap-  
19 plications for credit that is—

20 “(1) made to a consumer in an amount of not  
21 more than \$5,000, or such greater amount as the  
22 Bureau may, by rule, determine, with the amount to  
23 be adjusted annually to reflect changes in the Con-  
24 sumer Price Index for all urban consumers published  
25 by the Department of Labor; and

1           “(2) extended pursuant to an agreement that  
2           is—

3                   “(A)(i) other than an open-end credit plan;  
4           and

5                   “(ii) payable in 1 or more installments of  
6           less than 12 months (or such longer period as  
7           the Bureau may, by rule, determine);

8                   “(B) an open-end credit plan in which each  
9           advance is fully repayable within a defined time  
10          or in connection with a defined event, or both;  
11          or

12                   “(C) any other plan as the Bureau deter-  
13          mines, by rule.

14          “(b) REGISTRATION REQUIREMENT.—A person shall  
15          register with the Bureau before issuing credit in a small-  
16          dollar consumer credit transaction.”;

17                  (2) in section 173 (15 U.S.C. 1666j), by adding  
18          at the end the following:

19          “(d) Notwithstanding any other provisions of this  
20          title, any small-dollar consumer credit transaction, as de-  
21          fined in section 110(a), shall comply with the laws of the  
22          State in which the consumer resides with respect to annual  
23          percentage rates, interest, fees, charges, and such other  
24          similar or related matters as the Bureau may, by rule,

1 determine if the small-dollar consumer credit transaction  
2 is—

3 “(1) made over—

4 “(A) the Internet;

5 “(B) telephone;

6 “(C) facsimile;

7 “(D) mail;

8 “(E) electronic mail; or

9 “(F) other electronic communication; or

10 “(2) conducted by a national bank.”; and

11 (3) in the table of sections of chapter 1, by in-  
12 serting after the item relating to section 109 the fol-  
13 lowing:

“110. Registration requirement for small-dollar lenders.”.

14 (b) PROHIBITION ON CERTAIN FEES.—Section 915  
15 of the Electronic Fund Transfer Act (15 U.S.C. 1693l-  
16 1) is amended—

17 (1) by redesignating subsection (d) as sub-  
18 section (e); and

19 (2) by inserting after subsection (e) the fol-  
20 lowing:

21 “(d) ADDITIONAL FEES PROHIBITED.—

22 “(1) DEFINITION.—In this subsection, the term  
23 ‘general-use prepaid card’ has the meaning given the  
24 term—

25 “(A) in subsection (a)(2); or

1 “(B) by rule of the Bureau.

2 “(2) PROHIBITION.—With respect to the use of  
3 a general-use prepaid card by a consumer—

4 “(A) it shall be unlawful for any person to  
5 charge the consumer a fee for an overdraft, in-  
6 cluding a shortage of funds or a transaction  
7 processed for an amount exceeding the account  
8 balance on the general-use prepaid card;

9 “(B) any transaction for an amount ex-  
10 ceeding the account balance on the general-use  
11 prepaid card may be declined, except that the  
12 consumer may not be charged a fee for that  
13 purpose; and

14 “(C) the Bureau may, by rule, prohibit the  
15 charging of any fee so that the Bureau may—

16 “(i) prevent unfair, deceptive, or abu-  
17 sive practices; and

18 “(ii) promote the ability of the con-  
19 sumer to understand and compare the  
20 costs of general-use prepaid cards.”.

21 **SEC. 4. RESTRICTIONS ON LEAD GENERATION IN SMALL-**  
22 **DOLLAR CONSUMER CREDIT TRANSACTIONS.**

23 Chapter 2 of the Truth in Lending Act (15 U.S.C.  
24 1631 et seq.) is amended by adding at the end the fol-  
25 lowing:

1 **“SEC. 140B. RESTRICTIONS ON LEAD GENERATION IN**  
2 **SMALL-DOLLAR CONSUMER CREDIT TRANS-**  
3 **ACTIONS.**

4 “(a) DEFINITIONS.—In this section—

5 “(1) the term ‘sensitive personal financial infor-

6 mation’ means the Social Security number, financial

7 account number, bank routing number, bank ac-

8 count number, or any required security or access

9 code that is immediately necessary to permit access

10 to the financial account of an individual; and

11 “(2) the term ‘small-dollar consumer credit

12 transaction’ has the meaning given the term in sec-

13 tion 110(a).

14 “(b) IDENTIFICATION INFORMATION.—Any person

15 facilitating, brokering, arranging, gathering applications

16 for, or distributing sensitive personal financial information

17 in connection with a small-dollar consumer credit trans-

18 action shall prominently disclose information by which the

19 person may be contacted or identified, including for serv-

20 ice of process and for identification of the registrant of

21 any domain name registered or used.

22 “(c) PROHIBITION ON LEAD GENERATION IN SMALL-

23 DOLLAR CONSUMER CREDIT TRANSACTIONS.—No person

24 may facilitate, broker, arrange, gather applications for, or

25 distribute sensitive personal financial information in con-

26 nection with a small-dollar consumer credit transaction,



1 unless the person is directly providing the small-dollar  
2 consumer credit to the consumer.

3 “(d) RULE OF CONSTRUCTION.—

4 “(1) IN GENERAL.—Nothing in this section  
5 may be interpreted to limit the authority of the Bu-  
6 reau to further restrict activities covered by this sec-  
7 tion.

8 “(2) CLARIFICATION.—It shall not be consid-  
9 ered ‘facilitating’ in connection with a small-dollar  
10 consumer credit transaction to be engaged solely in  
11 1 of the following activities:

12 “(A) The provision of a telecommuni-  
13 cations service, or of an Internet access service  
14 or Internet information location tool (as those  
15 terms are defined in section 231 of the Commu-  
16 nications Act of 1934 (47 U.S.C. 231)).

17 “(B) The transmission, storage, retrieval,  
18 hosting, formatting, or translation (or any com-  
19 bination thereof) of a communication, without  
20 selection or alteration of the content of the  
21 communication, except that deletion of a par-  
22 ticular communication or material made by an-  
23 other person in a manner consistent with sec-  
24 tion 230(c) of the Communications Act of 1934  
25 (47 U.S.C. 230(c)).”.

1 **SEC. 5. STUDIES.**

2 (a) IN GENERAL.—Not later than 180 days after the  
3 date of enactment of this Act, the Government Account-  
4 ability Office (in this section referred to as the “GAO”)  
5 shall conduct a study regarding—

6 (1) the availability of capital on reservations of  
7 Indian tribes (as defined in section 4 of the Indian  
8 Self-Determination and Education Assistance Act  
9 (25 U.S.C. 450b)); and

10 (2) the impact that small-dollar consumer credit  
11 extended through Internet and non-Internet means  
12 to members of Indian tribes has had on economic  
13 opportunity and wealth for members of Indian  
14 tribes.

15 (b) CONSULTATION.—In conducting the study de-  
16 scribed in subsection (a), the GAO shall consult, as appro-  
17 priate, with—

18 (1) the Bureau of Consumer Financial Protec-  
19 tion;

20 (2) the Board of Governors of the Federal Re-  
21 serve System;

22 (3) the Bureau of Indian Affairs;

23 (4) federally recognized Indian tribes; and

24 (5) community development financial institu-  
25 tions operating in Indian lands.

1           (c) CONGRESSIONAL CONSIDERATION.—The study  
2 described in subsections (a) and (b) shall be presented to  
3 the Committee on Banking, Housing, and Urban Affairs  
4 and the Committee on Indian Affairs of the Senate and  
5 the Committee on Financial Services and the Committee  
6 on Natural Resources of the House of Representatives.

7 **SEC. 6. RULEMAKING.**

8           Not later than 1 year after the date of enactment  
9 of this Act, the Bureau of Consumer Financial Protection  
10 shall adopt any final rules necessary to implement the pro-  
11 visions of this Act and the amendments made by this Act.