

104TH CONGRESS
1ST SESSION

H. R. 1184

To amend the Truth in Lending Act to clarify the intent of such Act
and to reduce burdensome regulatory requirements on creditors.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 1995

Mr. McCOLLUM (for himself, Mr. LEACH, Mrs. ROUKEMA, Mr. BEREUTER, Mr. ROTH, Mr. BAKER of Louisiana, Mr. LAZIO of New York, Mr. BACHUS, Mr. CASTLE, Mr. KING, Mr. ROYCE, Mr. WELLER, Mr. EHR- LICH, Mr. CHRYSLER, Mr. CREMEANS, Mr. HEINEMAN, and Mr. LOBIONDO) introduced the following bill; which was referred to the Com- mittee on Banking and Financial Services

A BILL

To amend the Truth in Lending Act to clarify the intent
of such Act and to reduce burdensome regulatory re-
quirements on creditors.

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 “Truth in Lending Act
5 Amendments of 1995”.

6 **SEC. 2. TREATMENT OF CERTAIN CHARGES.**

7 (a) **THIRD PARTY FEES.**—Section 106(a) of the
8 Truth in Lending Act (15 U.S.C. 1605(a)) is amended

1 by adding after the second sentence the following new sen-
2 tence: “The finance charge shall not include fees and
3 amounts imposed by third parties not affiliated with the
4 creditor (including settlement agents, attorneys, and es-
5 crow and title companies) if the creditor does not expressly
6 require the imposition of the charges and does not retain
7 the charges.”.

8 (b) TAXES ON SECURITY INSTRUMENTS OR EVI-
9 DENCES OF INDEBTEDNESS.—Section 106(d) of the
10 Truth in Lending Act (15 U.S.C. 1605(d)) is amended
11 by adding at the end the following new paragraph:

12 “(3) Any tax levied on security instruments or
13 on documents evidencing indebtedness if the pay-
14 ment of such taxes is a precondition for recording
15 the instrument securing the evidence of indebted-
16 ness.”.

17 (c) PREPARATION OF LOAN DOCUMENTS.—Section
18 106(e)(2) of the Truth in Lending Act (15 U.S.C.
19 1605(e)(2)) is amended to read as follows:

20 “(2) Fees for preparation of loan-related docu-
21 ments and attending or conducting settlement.”.

22 (d) FEES RELATING TO PEST INFESTATIONS, IN-
23 SPECTIONS, AND HAZARDS.—Section 106(e)(5) of the
24 Truth in Lending Act (15 U.S.C. 1605(e)(5)) is amended
25 by inserting “, including fees related to pest infestations,

1 premises and structural inspections, and flood hazards”
2 before the period.

3 **SEC. 3. EXEMPTIONS FROM RESCISSION.**

4 (a) CERTAIN REFINANCINGS.—Section 125(e) of the
5 Truth in Lending Act (15 U.S.C. 1635(e)) is amended—

6 (1) by striking “or” at the end of paragraph
7 (3);

8 (2) by striking the period at the end of para-
9 graph (4) and inserting “; or”; and

10 (3) by adding at the end the following new
11 paragraph:

12 “(5) a transaction, other than a mortgage re-
13 ferred to in section 103(aa), which—

14 “(A) is secured by a first lien, in any
15 amount; and

16 “(B) constitutes a refinancing or consoli-
17 dation of an existing extension of credit.”.

18 (b) TECHNICAL AND CONFORMING AMENDMENT.—
19 Section 125(e)(2) of the Truth in Lending Act (15 U.S.C.
20 1635(e)(2)) is amended by inserting “, other than a trans-
21 action described in subsection (e)(5),” after “a refinancing
22 or consolidation (with no new advances)”.

1 **SEC. 4. TOLERANCES; BASIS OF DISCLOSURES.**

2 (a) TOLERANCES FOR ACCURACY.—Section 106 of
3 the Truth in Lending Act (15 U.S.C. 1605) is amended
4 by adding at the end the following new subsection:

5 “(f) TOLERANCE FOR ACCURACY.—In connection
6 with credit transactions not under an open end credit plan
7 that are secured by real property or a dwelling, the disclo-
8 sure of the finance charge and other disclosures affected
9 by any finance charge shall be treated as being accurate
10 for purposes of this title if the amount disclosed as the
11 finance charge does not vary from the actual finance
12 charge by more than an amount equal to $\frac{1}{2}$ of the numeri-
13 cal tolerance corresponding to, and generated by, the toler-
14 ance provided by section 107(c) with respect to the annual
15 percentage rate.”.

16 (b) BASIS OF DISCLOSURE FOR PER DIEM INTER-
17 EST.—Section 121(c) of the Truth in Lending Act (15
18 U.S.C. 1631(c)) is amended by adding at the end the fol-
19 lowing new sentence: “In the case of any consumer credit
20 transaction a portion of the interest on which is deter-
21 mined on a per diem basis and is to be collected upon
22 the consummation of such transaction, any disclosure with
23 respect to such portion of interest shall be deemed to be
24 accurate for purposes of this title if the disclosure is based
25 on information actually known to the creditor at the time

1 that the disclosure documents are being prepared for the
2 consummation of the transaction.”.

3 **SEC. 5. LIMITATION ON LIABILITY.**

4 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
5 ing Act (15 U.S.C. 1631 et seq.) is amended by adding
6 at the end the following new section:

7 **“SEC. 139. CERTAIN LIMITATIONS ON LIABILITY.**

8 “(a) LIMITATIONS ON LIABILITY FOR DISCLOSURES
9 RELATING TO CERTAIN FEES AND CHARGES OTHER
10 THAN FINANCE CHARGES.—

11 “(1) IN GENERAL.—For transactions con-
12 summated before the date of the enactment of the
13 Truth in Lending Act Amendments of 1995, a credi-
14 tor or any assignee of a creditor shall have no civil,
15 administrative, or criminal liability under this title
16 for, and a consumer shall have no extended rescis-
17 sion rights under section 125(f) with respect to, the
18 creditor’s treatment, for disclosure purposes, of—

19 “(A) taxes described in section 106(d)(3);

20 “(B) fees and amounts described in section
21 106(e) (2) and (5) and third party fees and
22 amounts described in section 106(a); and

23 “(C) delivery charges imposed by a credi-
24 tor.

1 “(2) EXCEPTIONS.—Subsection (a) shall not
2 apply to—

3 “(A) any individual action or counterclaim
4 brought under this title—

5 “(i) which was filed before October 1,
6 1994; and

7 “(ii) the pleadings in which (as filed
8 before such date) allege improper disclo-
9 sure of charges described in paragraph (1),
10 (2), or (3) of subsection (a);

11 “(B) any class action brought under this
12 title—

13 “(i) for which a class was certified be-
14 fore October 1, 1994; and

15 “(ii) the pleadings in which (as filed
16 before such date) allege improper disclo-
17 sure of charges described in paragraph (1),
18 (2), or (3) of subsection (a);

19 “(C) the named individual plaintiffs in any
20 class action brought under this title—

21 “(i) which was filed before October 1,
22 1994; and

23 “(ii) the pleadings in which (as filed
24 before such date) allege improper disclo-

1 sure of charges described in paragraph (1),
2 (2), or (3) of subsection (a); or

3 “(D) any consumer credit transaction with
4 respect to which a timely notice of rescission
5 was sent to the creditor before October 1, 1994.

6 “(b) EXEMPTION FROM LIABILITY FOR FINANCE
7 CHARGE DISCLOSURES WITHIN TOLERANCE LIMITS.—

8 “(1) IN GENERAL.—In the case of any
9 consumer credit transaction subject to this title, in-
10 cluding a transaction consummated before the date
11 of the enactment of the Truth in Lending Act
12 Amendments of 1995, no creditor or assignee with
13 respect to such transaction shall have any civil, ad-
14 ministrative, or criminal liability under this title for,
15 and no consumer shall have extended rescission
16 rights under section 125 by reason of, any disclosure
17 relating to the finance charge imposed with respect
18 to such transaction if the amount or percentage ac-
19 tually disclosed—

20 “(A) may be treated as accurate pursuant
21 to section 106(f), or

22 “(B) is greater than the amount or per-
23 centage required to be disclosed under this title.

24 “(2) EXCEPTIONS.—Paragraph (1) shall not
25 apply to—

1 “(A) any individual action or counterclaim
2 brought under this title which was filed before
3 October 1, 1994;

4 “(B) any class action brought under this
5 title for which a class was certified before Octo-
6 ber 1, 1994;

7 “(C) the named individual plaintiffs in any
8 class action brought under this title which was
9 filed before October 1, 1994; or

10 “(D) any consumer credit transaction with
11 respect to which a timely notice of rescission
12 was sent to the creditor before October 1,
13 1994.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
15 for chapter 2 of the Truth in Lending Act is amended
16 by inserting after the item relating to section 138 the fol-
17 lowing new item:

“Sec. 139. Certain limitations on liability.”.

18 **SEC. 6. APPLICABILITY.**

19 Except as otherwise provided in section 5, the amend-
20 ments made by this Act shall apply to all consumer credit
21 transactions consummated on or after the date of enact-
22 ment of this Act, except that the amendments made by
23 subsections (a) and (b) of section 3 shall apply to all ex-
24 tensions of credit with respect to which rescission rights
25 have not been asserted as of January 1, 1995.

1 **SEC. 7. LIMITATION ON RESCISSION PERIOD.**

2 Section 125(f) of the Truth in Lending Act (15
3 U.S.C. 1635(f)) is amended by adding at the end the fol-
4 lowing sentences: “The expiration of the right of rescission
5 pursuant to this subsection shall be absolute and no
6 consumer may assert rescission, affirmatively or as a de-
7 fense, in any action in any State or Federal court after
8 the earlier of the end of the 3-year period beginning on
9 the date of the consummation of the transaction or the
10 sale of the property securing the loan or other extension
11 of credit, except as otherwise provided in the preceding
12 sentence. This subsection shall supersede any State law
13 which is inconsistent with any provision of this sub-
14 section.”.

15 **SEC. 8. CALCULATION OF ACTUAL DAMAGES.**

16 Paragraph (1) of section 130(a) of the Truth in
17 Lending Act (15 U.S.C. 1640(a)) is amended to read as
18 follows:

19 “(1) Any actual damages sustained by such
20 person as a result of the failure (to the extent the
21 person demonstrates reliance on the inaccurate dis-
22 closure which prevented the person from accepting
23 better credit terms actually available to the person
24 from another creditor) and the amount of such dam-
25 ages shall be the difference between the finance
26 charges actually paid and the finance charges that

1 would have been paid over the same period under
2 credit terms applicable with respect to credit actu-
3 ally available to the person from another creditor.”.

4 **SEC. 9. ASSIGNEE LIABILITY.**

5 (a) VIOLATIONS APPARENT ON THE FACE OF TRANS-
6 ACTION DOCUMENTS.—Section 131(a) of the Truth in
7 Lending Act (15 U.S.C. 1641(a)) is amended to read as
8 follows:

9 “(a) LIABILITY OF ASSIGNEE FOR APPARENT VIOLA-
10 TIONS.—

11 “(1) IN GENERAL.—Except as otherwise specifi-
12 cally provided in this title, any civil action against
13 a creditor for a violation of this title, and any pro-
14 ceeding under section 108 against a creditor, with
15 respect to a consumer credit transaction may be
16 maintained against any assignee of such creditor
17 only if—

18 “(A) the violation for which such action or
19 proceeding is brought is apparent on the face of
20 the disclosure statement provided in connection
21 with such transaction pursuant to this title; and

22 “(B) the assignment to the assignee was
23 voluntary.

24 “(2) VIOLATION APPARENT ON THE FACE OF
25 THE DISCLOSURE DESCRIBED.—For the purpose of

1 this section, a violation is apparent on the face of
2 the disclosure statement if—

3 “(A) the disclosure can be determined to
4 be incomplete or inaccurate from the face of the
5 disclosure statement; or

6 “(B) the disclosure does not use the terms
7 or format required to be used by this title.”.

8 (b) SERVICER NOT TREATED AS ASSIGNEE.—Section
9 131 of the Truth in Lending Act (15 U.S.C. 1641) is
10 amended by adding at the end the following new sub-
11 section:

12 “(d) TREATMENT OF SERVICER.—

13 “(1) IN GENERAL.—A servicer of a consumer
14 obligation arising from a consumer credit trans-
15 action shall not be treated as an assignee of such ob-
16 ligation for purposes of this section unless the
17 servicer is the owner of the obligation.

18 “(2) SERVICER NOT TREATED AS OWNER ON
19 BASIS OF ASSIGNMENT FOR ADMINISTRATIVE CON-
20 VENIENCE.—A servicer of a consumer obligation
21 arising from a consumer credit transaction shall not
22 be treated as the owner of the obligation for pur-
23 poses of this section on the basis of an assignment
24 of the obligation from the creditor or another as-
25 signee to the servicer solely for the administrative

1 convenience of the servicer in servicing the obliga-
2 tion.

3 “(3) SERVICER DEFINED.—For purposes of this
4 subsection, the term ‘servicer’ has the same meaning
5 as in section 6(i)(2) of the Real Estate Settlement
6 Procedures Act of 1974.”.

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