

**AMENDMENT TO H.R. 4173
OFFERED BY MR. BACA OF CALIFORNIA**

Page 959, after line 13, add the following new paragraph at the end of section 4804(a):

1 (8) ADDITIONAL PROTECTIONS FOR CON-
2 SUMERS.—

3 (A) PAYDAY LOAN DISCLOSURE REQUIRE-
4 MENTS.—Chapter 2 of the Truth in Lending
5 Act (15 U.S.C. 1631 et seq.) is amended by in-
6 serting after section 129A the following new
7 section:

8 **“SEC. 129B. PAYDAY LOAN DISCLOSURE REQUIREMENTS.**

9 “(a) DEFINITIONS.—For purposes of this section, the
10 following definitions shall apply:

11 “(1) AFFILIATE.—The term ‘affiliate’ has the
12 same meaning as in section 129(k).

13 “(2) ELECTRONIC SIGNATURE.—The term ‘elec-
14 tronic signature’ means a signatures in digital or
15 other electronic form that meets the validity require-
16 ments of the Electronic Signatures in Global and
17 National Commerce Act.

18 “(3) EXTENDED PAYMENT PLAN.—The term
19 ‘extended payment plan’ means an amendment to

1 the payday loan that is signed in person or electroni-
2 cally by both the consumer and the creditor reflect-
3 ing an agreement that the consumer pay the out-
4 standing balance on a payday loan in 4 equal pay-
5 ments, where the period between each payment may
6 not be less than the duration of the original payday
7 loan.

8 “(4) HOME STATE.—

9 “(A) IN GENERAL.—The term ‘home
10 State’ means, with respect to any creditor or
11 any affiliate of a creditor, the State in which
12 the primary home office of the creditor or any
13 affiliate of the creditor is located.

14 “(B) HOME OFFICE.—The term ‘home of-
15 fice’ means the office that houses a majority of
16 the applicable party’s day-to-day management
17 and administrative support functions.

18 “(5) INTEREST AND FEES.—

19 “(A) IN GENERAL.—Except as provided in
20 subparagraph (B), the term ‘interest and fees’
21 includes any charge payable directly or indi-
22 rectly by the consumer and imposed directly or
23 indirectly by the creditor as an incident to or a
24 condition of the extension of credit.

1 “(B) CHARGES NOT INCLUDED.—The term
2 ‘interest and fees’ does not include—

3 “(i) any charge for a default, delin-
4 quency, or similar occurrence; or

5 “(ii) any charge imposed when, if for
6 any reason, funds are not made available
7 to pay an item or authorization delivered
8 to the creditor in the manner described in
9 subparagraph (A) or (B) of paragraph (1)
10 to the extent that—

11 “(I) the charge does not exceed
12 the greater of \$25 or the amount
13 charged to the creditor by the credi-
14 tor’s financial institution; and

15 “(II) the charge is only imposed
16 once per each item or authorization
17 regardless of whether the item or au-
18 thorization is presented for payment
19 more than once.

20 “(6) LOAN STORE.—The term ‘loan store’
21 means each location operated by a creditor at which
22 applications for payday loans are received or the
23 proceeds of payday loans are disbursed.

24 “(7) PAYDAY LOAN; LOAN.—The terms ‘payday
25 loan’ and ‘loan’ mean a closed-end credit trans-

1 action, evidenced by a loan agreement signed by the
2 creditor and the consumer, in person or electroni-
3 cally, unsecured by any interest in the consumer's
4 tangible personal property with a term of at least 7
5 and not more than 90 days in which the amount fi-
6 nanced does not exceed \$2,000 with a finance charge
7 exceeding an annual percentage rate of 36 percent,
8 and the consumer—

9 “(A) receives funds from and incurs inter-
10 est or a fee payable to a creditor, and contem-
11 poraneously with the receipt of funds, provides
12 a check or other payment instrument to the
13 creditor who agrees with the consumer not to
14 deposit or present the check or payment instru-
15 ment for more than 1 day; or

16 “(B) receives funds from and incurs inter-
17 est or a fee payable to a creditor, and contem-
18 poraneously with the receipt of funds, author-
19 ized the creditor to initiate a debt or debits to
20 the consumer's deposit account (by electronic
21 fund transfer or remotely created check) after
22 1 or more days.

23 “(8) PAYDAY LENDER.—The term ‘payday
24 lender’ means any creditor with respect to a payday
25 loan.

1 “(9) REFINANCING.—The term ‘refinancing’
2 means the use of the proceeds of 1 payday loan ob-
3 tained from a creditor to pay off any amount due to
4 that creditor.

5 “(b) PROTECTIONS FOR CONSUMERS.—

6 “(1) INTEREST AND FEE CAP.—A payday lend-
7 er may not—

8 “(A) require a consumer to pay—

9 “(i) in the case of any original payday
10 loan, interest and other fees and charges
11 that total more than 15 cents for every
12 dollar loaned; and

13 “(ii) in the case of an original payday
14 loan originated over the Internet, an addi-
15 tional origination fee in excess of 5 percent
16 of the original principal loan amount;

17 “(B) require a consumer to pay interest
18 and fees that, combined, total more than—

19 “(i) in the case of the 1st refinancing
20 of an outstanding payday loan, 15 cents
21 for every dollar of the outstanding original
22 principal loan amount; and

23 “(ii) in the case of the 2nd refi-
24 nancing of an outstanding payday loan, 10

1 cents for every dollar of the outstanding
2 original principal loan amount; or

3 “(C) require a consumer to pay an origina-
4 tion fee for a payday loan that is refinanced.

5 “(2) MANDATORY DISCLOSURES.—A payday
6 lender may not make or refinance a payday loan un-
7 less the creditor has first provided the consumer
8 with a copy of a written loan agreement, which shall
9 be signed by the creditor and by the consumer and
10 shall include the following information in English
11 and in the language in which the loan was nego-
12 tiated:

13 “(A) A clear and conspicuous description
14 of the terms of the loan, including the total cost
15 of all fees and other charges in connection with
16 the loan stated as a dollar amount, and the con-
17 sumer’s payment obligations under the loan.

18 “(B) The name, address and telephone
19 number of the creditor making the loan, and
20 the name of title of the individual employee of
21 the creditor who signs the loan agreement on
22 behalf of the creditor.

23 “(C) The following statements, in at least
24 14-point bold face type:

1 “(i) WARNING.—This loan is not in-
2 tended to meet long-term financial needs.
3 This loan should be used only to meet
4 short-term cash needs.

5 “(ii) CREDIT COUNSELING AVAIL-
6 ABILITY.—You should consider contacting
7 an independent, nonprofit credit counseling
8 agency approved by the National Founda-
9 tion for Credit Counseling (NFCC) or by a
10 State or Federal Government agency. You
11 may obtain information on how to contact
12 an approved counselor near you by calling
13 the National Foundation for Credit Coun-
14 seling at 1-800-388-2227.

15 “(iii) NO CRIMINAL PROSECUTION OR
16 SECURITY INTEREST.—You cannot be
17 prosecuted in criminal court to collect this
18 loan, and the creditor may not take or at-
19 tempt to take an interest in any of your
20 personal property to secure his loan. .

21 “(3) ADDITIONAL PUBLIC DISCLOSURES.—A
22 payday lender may not make or refinance a payday
23 loan to any consumer unless the following notices
24 are posted conspicuously in English and Spanish
25 and in not less than 1-inch bold print in the credi-

1 tor's public lending area in each loan store, or, if the
2 loan is made using the Internet, fax or other means,
3 are posted conspicuously on the creditor's public
4 internet site relating to any such payday loan:

5 “(A) WARNING.—This loan is not intended
6 to meet long-term financial needs. This loan
7 should be used only to meet short-term cash
8 needs.

9 “(B) CREDIT COUNSELING AVAIL-
10 ABILITY.—You should consider contacting an
11 independent, nonprofit credit counseling agency
12 approved by the National Foundation for Credit
13 Counseling (NFCC) or by a State or Federal
14 Government agency. You may obtain informa-
15 tion on how to contact an approved counselor
16 near you by calling the National Foundation for
17 Credit Counseling at 1-800-388-2227.

18 “(C) NO CRIMINAL PROSECUTION OR SE-
19 CURITY INTEREST.—You cannot be prosecuted
20 in criminal court to collect this loan, and the
21 creditor may not take or attempt to take an in-
22 terest in any of your personal property to se-
23 cure his loan.

24 “(4) CREDITOR SURETY BOND REQUIRE-
25 MENTS.—

1 “(A) IN GENERAL.—A payday lender may
2 not make or refinance a payday loan unless the
3 creditor has obtained and filed, in accordance
4 with subparagraph (B), a surety bond in the
5 following amount:

6 “(i) A surety bond in the amount of
7 \$100,000 for each loan store operated by
8 the creditor, if the creditor operates fewer
9 than 10 loan stores and does not offer any
10 payday loans over the Internet.

11 “(ii) A surety bond in the amount of
12 \$1,000,000, if the creditor operates 10 or
13 more loan stores or offers loans over the
14 Internet.

15 “(iii) Such greater amount as may be
16 required by applicable State law.

17 “(B) BOND REQUIREMENTS.—The surety
18 bond obtained by a payday lender to meet the
19 requirements of subparagraph (A) shall be filed
20 with, and for the benefit of, the State attorney
21 general in the creditor’s home state.

22 “(C) AGGREGATION OF LENDER AND AF-
23 FILIATE UNDER CERTAIN CIRCUMSTANCES.—
24 For purposes of this paragraph, a creditor and
25 each affiliate of a creditor which has the same

1 home State as the creditor may aggregate the
2 loan stores operated by such creditor and any
3 such affiliate for purposes of determining the
4 amount of the surety bond required to be filed
5 under subparagraph (A).

6 “(5) EXTENDED PAYMENT PLAN.—

7 “(A) IN GENERAL.—A payday lender may
8 not make or refinance a payday loan unless the
9 terms of the loan require the creditor, upon re-
10 ceiving notice from the consumer of an inability
11 to repay prior to close of business on the last
12 business day before the original due date of the
13 loan, provides the consumer with notice of and
14 the right to opt into an extended payment plan,
15 without charge, 1 time in any 12 month period.

16 “(B) LIMITATION DURING EXTENDED PAY-
17 MENT PLAN.—A creditor may not engage in
18 any collection activity (or procure the services
19 of any other for such purpose) during the term
20 of any extended payment plan.

21 “(6) REFINANCING.—A payday lender may
22 not—

23 “(A) refinance a payday loan for less than
24 7 days;

1 “(B) refinance a payday loan more than 2
2 consecutive times; refinance a payday loan with-
3 out terminating the previous agreement and en-
4 tering into a new agreement that the creditor
5 and consumer each sign in person or with an
6 electronic signature; or

7 “(C) require a consumer to pay interest
8 and fees in connection with a refinancing that,
9 combined, total more than the amount per-
10 mitted under paragraph (1)(B).”.

11 (B) TECHNICAL AND CONFORMING AMEND-
12 MENTS.—

13 (i) DISCLOSURES.—Section 128(a)(4)
14 of the Truth in Lending Act (U.S.C.
15 1638(a)(4)) is amended—

16 (I) by striking “or” after “does
17 not exceed \$5,” and

18 (II) by inserting “, or if the loan
19 is subject to section 129B”.

20 (ii) EFFECT ON OTHER LAWS.—Sec-
21 tion 111 of the Truth in Lending Act
22 (U.S.C. 1610) is amended—

23 (I) in subsection (b), by inserting
24 “subsection (f) of this section and”
25 after “Except as provided in”; and

1 (II) by adding at the end the fol-
2 lowing new subsection:

3 “(f) PAYDAY LOANS.—

4 “(1) IN GENERAL.—The following provisions of
5 the law of any State shall not apply to any payday
6 loan, or any refinancing of a payday loan, that is
7 subject to section 129B:

8 “(A) Any provision requiring minimum
9 loan terms.

10 “(B) Any provision prohibiting, defining or
11 limiting any refinancing.

12 “(C) Any provision prohibiting or limiting
13 the use of a check or debit authorization to
14 originate a payday loan.

15 “(D) Any provision prohibiting or man-
16 dating extended payment plans.

17 “(E) Any provision limiting the rate or
18 amount of interest and fees or default, delin-
19 quency or not sufficient fund fees or other
20 charges which may be taken, received or re-
21 served by creditors for payday loans or any refi-
22 nancing of a payday loan.

23 “(2) ENFORCEMENT.—Notwithstanding para-
24 graph (1), any State may employ or establish State

1 laws for the purpose of enforcing the requirements
2 of section 129B.”.

3 (C) CLERICAL AMENDMENT.—The table of
4 sections for chapter 2 of the Truth in Lending
5 Act is amended by inserting after the item re-
6 lating to section 129 the following new items:

“129A. Fiduciary duty of servicers of pooled residential mortgages.

“129B. Protections for consumers.”.

