

AMENDMENT TO H.R. 4173**OFFERED BY Mr. WATT & Mr. FRANK**

Page 827, line 4, after “defendant,” strike the rest of line 4 through line 6 and insert, “to enforce and secure remedies under provisions of this title or regulations issued thereunder, or otherwise provided under other law.”.

Page 831, line 23, after “that” insert “directly and specifically”.

Page 832, strike lines 15 through 20, and insert the following:

1 “(B) the State law prevents or signifi-
2 cantly interferes with the ability of an insured
3 depository institution chartered as a national
4 bank to engage in the business of banking. Any
5 preemption determination under this subpara-
6 graph may be made by a court or by regulation
7 or order of the Comptroller of the Currency in
8 accordance with applicable law, on a case-by-
9 case basis. Any such determination by a court
10 shall comply with the standards set forth in
11 subsection (d) of this section, with the court

1 making the subsection (d) finding de novo. If
2 the court determines that the state law is pre-
3 empted under this subparagraph, the court may
4 grant equitable relief as may be appropriate; or

Page 832, strike line 23 and all that follows through
page 833, line 2 and insert the following:

5 “(2) SAVINGS CLAUSE.—This Act does not pre-
6 empt or alter the applicability of any State law to
7 any subsidiary or affiliate of a national bank (other
8 than a national bank) that is not a depository insti-
9 tution.

Page 833, strike lines 3 through 17 and insert the
following:

10 “(3) CASE-BY-CASE DETERMINATION.—

11 “(A) IN GENERAL.—A case-by-case deter-
12 mination made pursuant to this section means
13 a determination concerning the impact of a par-
14 ticular State law on any national bank that is
15 subject to that law, or the law of any other
16 State law with substantively equivalent effect.

17 “(B) CONSULTATION.—When making a
18 determination under subparagraph (A) that a
19 law of another State has a substantively equiva-
20 lent effect as one that the Comptroller of the

1 Currency is preempting, the Comptroller shall
2 first consult with the Consumer Financial Pro-
3 tection Agency and shall take such Agency's
4 views into account when making the determina-
5 tion.

6 “(4) RULE OF CONSTRUCTION.—This Act does
7 not occupy the field in any area of State law. A
8 court shall review any claim that a State law is pre-
9 empted by this Act as a matter of law and without
10 deference to any agency determination that a State
11 law is preempted under this Act. Except as provided
12 in the preceding sentence, nothing in this subsection
13 shall affect the deference that a court may afford to
14 the Comptroller of the Currency regarding the
15 meaning or interpretation of title LXII of the Re-
16 vised Statutes of the United States or other Federal
17 laws.

18 “(5) COMPTROLLER DETERMINATION NOT DEL-
19 EGABLE.—Any regulation, order or determination
20 made by the Comptroller of the Currency under sub-
21 section (b)(1)(B) shall be made by the Comptroller
22 and shall not be delegable to another officer or em-
23 ployee of the Comptroller of the Currency.

Page 833, line 18, after “regulation” insert “or
order”.

Page 833, strike line 25 and all that follows through page 834, line 2, and insert the following: “prevents or significantly interferes with the ability of a national bank to engage in the business of banking.”.

Page 834, line 5, after “prescribe” insert “a”, after “regulation” insert “or order”.

Page 834, line 9, strike the first “a” and replace with “an appropriate consumer protection”.

Page 834, line 10, strike “which regulates” and replace with “that is applicable to”.

Page 835, after line 9, insert new subsections as follows:

1 “(g) PRESERVATION OF POWERS RELATED TO
2 CHARGING INTEREST.—No provision of this title shall be
3 construed as altering or otherwise affecting the authority
4 conferred by section 5197 of the Revised Statutes of the
5 United States (12 U.S.C. 85) for the charging of interest
6 by a national bank at the rate allowed by the laws of the
7 State, territory or district where the bank is located.

8 “(h) TRANSPARENCY OF OCC PREEMPTION DETER-
9 MINATIONS.—The Comptroller of the Currency shall pub-
10 lish and update no less frequently than quarterly, a list
11 of preemption determinations by the Comptroller of the
12 Currency then in effect that identifies the activities and

1 practices covered by each determination and the require-
2 ments and constraints determined to be preempted.

Page 835, on lines 21 and 22 strike “supervisory, examination, or regulatory” and insert “visitorial”.

Page 836, strike lines 4 through 7 and renumber subsequent sections accordingly.

Page 836, line 12, after “or” delete the rest of line 12 through line 15 and insert, “nonpreempted State law against a national bank, as authorized by such law, or to seek relief as authorized by such law.”.

Page 838, line 13, after “that” and insert “directly and specifically”.

Page 839, strike lines 1 through 7, and insert the following:

3 “(B) the State law prevents or signifi-
4 cantly interferes with the ability of an insured
5 depository institution chartered as a Federal
6 savings association to engage in the business of
7 banking. Any preemption determination under
8 this subparagraph may be made by a court or
9 by regulation or order of the Director of the Of-
10 fice of Thrift Supervision in accordance with
11 applicable law, on a case-by-case basis. Any

1 such determination by a court shall comply with
2 the standards set forth in subsection (d) of this
3 section, with the court making the subsection
4 (d) finding de novo. If the court determines
5 that the state law is preempted under this sub-
6 paragraph, the court may grant equitable relief
7 as may be appropriate; or

Page 839, strike lines 10 through 14 and insert the following:

8 “(2) SAVINGS CLAUSE.—This Act does not pre-
9 empt or alter the applicability of any State law to
10 any subsidiary or affiliate of a Federal savings asso-
11 ciation (other than a Federal savings association)
12 that is not a depository institution.

Page 839, strike line 15 and all that follows through page 840, line 4 and insert the following:

13 “(3) CASE-BY-CASE DETERMINATION.—
14 “(A) IN GENERAL.—A case-by-case deter-
15 mination made pursuant to this section means
16 a determination concerning the impact of a par-
17 ticular State law on any Federal savings asso-
18 ciation that is subject to that law, or the law
19 of any other State law with substantively equiv-
20 alent effect.

1 “(B) CONSULTATION.—When making a
2 determination under subparagraph (A) that a
3 law of another State has a substantively equiva-
4 lent effect as one that the Director of the Office
5 of Thrift Supervision is preempting, the Direc-
6 tor shall first consult with the Consumer Finan-
7 cial Protection Agency and shall take such
8 Agency’s views into account when making the
9 determination.

10 “(4) RULE OF CONSTRUCTION.—This Act does
11 not occupy the field in any area of State law. A
12 court shall review any claim that a State law is pre-
13 empted by this Act as a matter of law and without
14 deference to any agency determination that a State
15 law is preempted under this Act. Except as provided
16 in the preceding sentence, nothing in this subsection
17 shall affect the deference that a court may afford to
18 the Director of the Office of Thrift Supervision re-
19 garding the meaning or interpretation of title LXII
20 of the Revised Statutes of the United States or
21 other Federal laws.

22 “(5) OTS DETERMINATION NOT DELEGABLE.—
23 Any regulation, order or determination made by the
24 Director of the Office of Thrift Supervision under
25 subsection (b)(1)(B) shall be made by the Director

1 and shall not be delegable to another officer or em-
2 ployee of the Director of the Office of Thrift Super-
3 vision.

Page 840, line 7, after "regulation" insert "or order".

Page 840, line 15, after "regulation" insert "or order".

Page 840, strike lines 22 through 24 and insert the following: "finding that the provision prevents or significantly interferes with the ability of a Federal savings association to engage in the business of banking."

Page 841, after line 23, insert new subsections as follows and renumber subsequent sections accordingly:

4 "(g) PRESERVATION OF POWERS RELATED TO
5 CHARGING OF INTEREST.—No provision of this title shall
6 be construed as altering or otherwise affecting the author-
7 ity conferred by section 5197 of the Revised Statutes of
8 the United States (12 U.S.C. 85) for the charging of inter-
9 est by a Federal savings association at the rate allowed
10 by the laws of the State, territory, or district where the
11 bank is located.

12 "(h) TRANSPARENCY OF OTS PREEMPTION DETER-
13 MINATIONS.—The Director of the Office of Thrift Super-
14 vision shall publish and update no less frequently than

1 quarterly, a list of preemption determinations by such Di-
2 rector then in effect that identifies the activities and prac-
3 tices covered by each determination and the requirements
4 and constraints determined to be preempted.

Page 842, strike lines 13 through 16 and renumber subsequent sections accordingly.

Page 842, line 22, after "law," delete the rest of line 22 through page 843, line 2 and insert, "or to seek relief as authorized by such law".

