H. R. 3299

To amend the Revised Statutes, the Home Owners’ Loan Act, the Federal Credit Union Act, and the Federal Deposit Insurance Act to require the rate of interest on certain loans remain unchanged after transfer of the loan, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 19, 2017

Mr. MCHENRY (for himself and Mr. MEEKS) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Revised Statutes, the Home Owners’ Loan Act, the Federal Credit Union Act, and the Federal Deposit Insurance Act to require the rate of interest on certain loans remain unchanged after transfer of the loan, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Protecting Consumers’ Access to Credit Act of 2017”.

SEC. 2. FINDINGS.

Congress finds that—
(1) the contractual doctrine of valid when made which, as applied to lending agreements, provides that a loan that is valid at inception cannot become usurious upon subsequent sale or transfer to another person;

(2) this important and longstanding principle derives from the common law and its application has been a cornerstone of United States banking law for nearly 200 years, as provided in the case Nichols v. Fearson, 32 U.S. (7 Pet.) 103, 106 (1833), where the Supreme Court famously declared: “Yet the rule of law is everywhere acknowledged, that a contract free from usury in its inception, shall not be invalidated by any subsequent usurious transactions upon it.”;

(3) in 2016, the Solicitor General, in consultation with all Federal banking regulators, filed an amicus brief in the case of Midland Funding, LLC v. Madden, 136 S. Ct. 2505 (2016) (mem.), denying cert. to 786 F.3d 246 (2d Cir. 2015), that described the United States Court of Appeals for the Second Circuit in that case “incorrect” with an “analysis reflect[ing] a misunderstanding” of section 85 of the National Bank Act and Supreme Court precedent,
because it contradicted the contractual doctrine of valid when made;

(4) the valid-when-made doctrine, by bringing certainty to the legal treatment of all valid loans that are transferred, greatly enhances liquidity in the credit markets by widening the potential pool of loan buyers and reducing the cost of credit to borrowers at the time of origination;

(5) a joint academic study from professors at Stanford, Fordham, and Columbia universities concluded that the Madden v. Midland decision has already disproportionately affected low- and moderate-income individuals in the United States with lower FICO scores; and

(6) if the valid-when-made doctrine is not reaffirmed soon by Congress, the lack of access to safe and affordable financial services will force households in the United States with the fewest resources to seek financial products that are nontransparent, fail to inform consumers about the terms of credit available, and do not comply with State and Federal laws (including regulations).

SEC. 3. RATE OF INTEREST AFTER TRANSFER OF LOAN.

(a) AMENDMENT TO THE REVISED STATUTES.—Section 5197 of the Revised Statutes (12 U.S.C. 85) is
amended by adding at the end the following: “A loan that is valid when made as to its maximum rate of interest in accordance with this section shall remain valid with respect to such rate regardless of whether the loan is subsequently sold, assigned, or otherwise transferred to a third party, and may be enforced by such third party notwithstanding any State law to the contrary.”.

(b) Amendment to the Home Owners’ Loan Act.—Section 4(g) of the Home Owners’ Loan Act (12 U.S.C. 1463(g)) is amended by adding at the end the following:

“(3) A loan that is valid when made as to its maximum rate of interest in accordance with this subsection shall remain valid with respect to such rate regardless of whether the loan is subsequently sold, assigned, or otherwise transferred to a third party, and may be enforced by such third party notwithstanding any State law to the contrary.”.

(c) Amendment to the Federal Credit Union Act.—Section 205(g) of the Federal Credit Union Act (12 U.S.C. 1785(g)) is amended by adding at the end the following:

“(3) A loan that is valid when made as to its maximum rate of interest in accordance with this subsection shall remain valid with respect to such rate regardless of
whether the loan is subsequently sold, assigned, or otherwise transferred to a third party, and may be enforced by such third party notwithstanding any State law to the contrary.’’.

(d) Amendment to the Federal Deposit Insurance Act.—Section 27 of the Federal Deposit Insurance Act (12 U.S.C. 1831d) is amended by adding at the end the following:

“(e) A loan that is valid when made as to its maximum rate of interest in accordance with this section shall remain valid with respect to such rate regardless of whether the loan is subsequently sold, assigned, or otherwise transferred to a third party, and may be enforced by such third party notwithstanding any State law to the contrary.”.

SEC. 4. RULE OF CONSTRUCTION.

Nothing in this Act may be construed as limiting the authority or jurisdiction of the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Bureau of Consumer Financial Protection, or the National Credit Union Administration.