

109TH CONGRESS
1ST SESSION

H. R. 3426

To clarify the applicability of State law to national banks and Federal savings associations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2005

Mr. GUTIERREZ (for himself, Mr. FRANK of Massachusetts, Ms. LEE, and Mrs. MCCARTHY) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To clarify the applicability of State law to national banks and Federal savings associations, 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 “Preservation of Fed-
5 eralism in Banking Act”.

6 **TITLE I—NATIONAL BANKS**

7 **SEC. 101. STATE LAW PREEMPTION STANDARDS FOR NA-**
8 **TIONAL BANKS CLARIFIED.**

9 (a) IN GENERAL.—Chapter One of title LXII of the
10 Revised Statutes of the United States (12 U.S.C. 21 et

1 seq.) is amended by inserting after section 5136B the fol-
2 lowing new section:

3 **“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NA-**
4 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
5 **FIED.**

6 “(a) STATE CONSUMER LAWS OF GENERAL APPLI-
7 CATION.—

8 “(1) IN GENERAL.—Notwithstanding any other
9 provision of Federal law, any consumer protection in
10 State consumer law of general application (including
11 any law relating to unfair or deceptive acts or prac-
12 tices, any consumer fraud law and repossession,
13 foreclosure, and collection) shall apply to any na-
14 tional bank.

15 “(2) NATIONAL BANK DEFINED.—For purposes
16 of this section, the term ‘national bank’ includes any
17 Federal branch established in accordance with the
18 International Banking Act of 1978.

19 “(b) STATE LAWS RELATED TO LAWS USED BY NA-
20 TIONAL BANKS FOR THEIR BENEFIT.—When a national
21 bank avails itself of a State law for its benefit, all related
22 consumer protections in State law shall apply.

23 “(c) STATE BANKING LAWS ENACTED PURSUANT TO
24 FEDERAL LAW.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of Federal law and except as provided in
3 paragraph (2), any State law that—

4 “(A) is applicable to State banks; and

5 “(B) was enacted pursuant to or in accord-
6 ance with, and is not inconsistent with, an Act
7 of Congress, including the Gramm-Leach-Bliley
8 Act, the Consumer Credit Protection Act, and
9 the Real Estate Settlement Procedures Act,
10 that explicitly or by implication, permits States
11 to exceed or supplement the requirements of
12 any comparable Federal law,
13 shall apply to any national bank.

14 “(2) EXCEPTIONS.—Paragraph (1) shall not
15 apply with respect to any State law if—

16 “(A) the State law discriminates against
17 national banks; or

18 “(B) State law is inconsistent with provi-
19 sions of Federal law other than this title LXII,
20 but only to the extent of the inconsistency (as
21 determined in accordance with the provision of
22 the other Federal Law).

23 “(d) STATE LAWS PROTECTING AGAINST PREDA-
24 TORY MORTGAGE LOANS.—To the extent not otherwise
25 addressed in this section, State laws providing greater pro-

1 tection in high cost mortgage loans, however denominated,
2 both in coverage and content, than is provided under the
3 Truth in Lending Act (including the provisions amended
4 by the Home Ownership and Equity Protection Act of
5 1994) shall apply to any national bank.

6 “(e) COMPARABLE FEDERAL REGULATION RE-
7 QUIRED.—In relation to the regulation of consumer credit
8 and deposit transactions, the Comptroller may preempt
9 State law pursuant to this title only when there is a com-
10 parable Federal statute, or regulations pursuant to a Fed-
11 eral statute other than this title, expressly governing the
12 activity, except in relation to interest pursuant to section
13 5197.

14 “(f) NO NEGATIVE IMPLICATIONS FOR APPLICA-
15 BILITY OF OTHER STATE LAWS.—No provision of this
16 section shall be construed as altering or affecting the ap-
17 plicability, to national banks, of any State law which is
18 not described in this section.

19 “(g) EFFECT OF TRANSFER OF TRANSACTION.—A
20 transaction that is not entitled to preemption at the time
21 of the origination of the transaction does not become enti-
22 tled to preemption under this title by virtue of its subse-
23 quent acquisition by a national bank.

24 “(h) DENIAL OF PREEMPTION NOT A DEPRIVATION
25 OF A CIVIL RIGHT.—The preemption of any provision of

1 the law of any State with respect to any national bank
2 shall not be treated as a right, privilege, or immunity for
3 purposes of section 1979 of the Revised Statutes of the
4 United States (42 U.S.C. 1983).

5 “(i) DEFINITION.—For purposes of this section, the
6 terms ‘includes’ and ‘including’ have the same meaning
7 as in section 3(t) of the Federal Deposit Insurance Act.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
9 for chapter One of title LXII of the Revised Statutes of
10 the United States is amended by inserting after the item
11 relating to section 5136B the following new item:

“5136C. State law preemption standards for national banks and subsidiaries
clarified.”.

12 **SEC. 102. VISITORIAL STANDARDS.**

13 Section 5136C of the Revised Statutes of the United
14 States (as added by section 101(a) of this Act) is amended
15 by adding at the end the following new subsections:

16 “(j) VISITORIAL POWERS.—No provision of this title
17 which relates to visitorial powers or otherwise limits or re-
18 stricts the supervisory, examination, or regulatory author-
19 ity to which any national bank is subject shall be con-
20 strued as limiting or restricting the authority of any attor-
21 ney general (or other chief law enforcement officer) of any
22 State to bring any action in any court of appropriate juris-
23 diction—

1 “(1) to enforce any applicable Federal or State
2 law, as authorized by such law; or

3 “(2) on behalf of residents of such State, to en-
4 force any applicable provision of any Federal or
5 State law against a national bank, as authorized by
6 such law, or to seek relief and recover damages for
7 such residents from any violation of any such law by
8 any national bank.

9 “(k) ENFORCEMENT ACTIONS.—The ability of the
10 Comptroller to bring an enforcement action under this
11 title or section 5 of the Federal Trade Commission Act
12 does not preclude private parties from enforcing rights
13 granted under Federal or State law in the courts.”.

14 **SEC. 103. CLARIFICATION OF LAW APPLICABLE TO STATE-**
15 **CHARTERED NONDEPOSITORY INSTITUTION**
16 **SUBSIDIARIES.**

17 Section 5136C of the Revised Statutes of the United
18 States (as added by section 101(a) of this Act) is amended
19 by inserting after subsection (k) (as added by section 102)
20 the following new subsection:

21 “(l) CLARIFICATION OF LAW APPLICABLE TO NON-
22 DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILI-
23 ATES OF NATIONAL BANKS; DEFINITIONS.—

24 “(1) IN GENERAL.—No provision of this title
25 shall be construed as preempting the applicability of

1 State law to any State-chartered nondepository insti-
2 tution, subsidiary, other affiliate, or agent of a na-
3 tional bank.

4 “(2) DEFINITIONS.—For purposes of this sec-
5 tion, the following definitions shall apply:

6 “(A) DEPOSITORY INSTITUTION, SUB-
7 SIDIARY, AFFILIATE.—The terms ‘depository in-
8 stitution’, ‘subsidiary’, and ‘affiliate’ have the
9 same meanings as in section 3 of the Federal
10 Deposit Insurance Act.

11 “(B) NONDEPOSITORY INSTITUTION.—The
12 term ‘nondepository institution’ means any enti-
13 ty that is not a depository institution.”.

14 **SEC. 104. DATA COLLECTION AND REPORTING.**

15 (a) COLLECTING AND MONITORING CONSUMER COM-
16 PLAINTS.—

17 (1) IN GENERAL.—The Comptroller of the Cur-
18 rency shall record and monitor each complaint re-
19 ceived directly or indirectly from a consumer regard-
20 ing a national bank or any subsidiary of a national
21 bank and record the resolution of the complaint.

22 (2) FACTORS TO BE INCLUDED.—In carrying
23 out the requirements of paragraph (1), the Comp-
24 troller of the Currency shall include—

1 (A) the date the consumer complaint was
2 received;

3 (B) the nature of the complaint;

4 (C) when and how the complaint was re-
5 solved, including a brief description of the ex-
6 tent, and the results, of the investigation made
7 by the Comptroller into the complaint, a brief
8 description of any notices given and inquiries
9 made to any other Federal or State officer or
10 agency in the course of the investigation or res-
11 olution of the complaint, a summary of the en-
12 forcement action taken upon completion of the
13 investigation, and a summary of the results of
14 subsequent periodic reviews by the Comptroller
15 of the extent and nature of compliance by the
16 national bank or subsidiary with the enforce-
17 ment action; and

18 (D) if the complaint involves any alleged
19 violation of a State law (whether or not Federal
20 law preempts the application of such State law
21 to such national bank) by such bank, a cite to
22 and a description of the State law that formed
23 the basis of the complaint.

24 (b) REPORT TO THE CONGRESS.—

1 (1) PERIODIC REPORTS REQUIRED.—The
2 Comptroller of the Currency shall submit a report
3 semi-annually to the Congress on the consumer pro-
4 tection efforts of the Office of the Comptroller of the
5 Currency.

6 (2) CONTENTS OF REPORT.—Each report sub-
7 mitted under paragraph (1) shall include the fol-
8 lowing:

9 (A) The total number of consumer com-
10 plaints received by the Comptroller during the
11 period covered by the report with respect to al-
12 leged violations of consumer protection laws by
13 national banks and subsidiaries of national
14 banks.

15 (B) The total number of consumer com-
16 plaints received during the reporting period that
17 are based on each of the following:

18 (i) Each title of the Consumer Credit
19 Protection Act (reported as a separate ag-
20 gregate number for each such title).

21 (ii) The Truth in Savings Act.

22 (iii) The Right to Financial Privacy
23 Act of 1978.

24 (iv) The Expedited Funds Availability
25 Act.

1 (v) The Community Reinvestment Act
2 of 1977.

3 (vi) The Bank Protection Act of 1968.

4 (vii) Title LXII of the Revised Stat-
5 utes of the United States.

6 (viii) The Federal Deposit Insurance
7 Act.

8 (ix) The Real Estate Settlement Pro-
9 cedures Act of 1974.

10 (x) The Home Mortgage Disclosure
11 Act of 1975.

12 (xi) Any other Federal law.

13 (xii) State consumer protection laws
14 (reported as a separate aggregate number
15 for each State and each State consumer
16 protection law).

17 (xiii) Any other State law (reported
18 separately for each State and each State
19 law).

20 (C) A summary description of the resolu-
21 tion efforts by the Comptroller for complaints
22 received during the period covered, including—

23 (i) the average amount of time to re-
24 solve each complaint;

1 (ii) the median period of time to re-
2 solve each complaint;

3 (iii) the average and median time to
4 resolve complaints in each category of com-
5 plaints described in each clause of sub-
6 paragraph (B); and

7 (iv) a summary description of the
8 longest outstanding complaint during the
9 reporting period and the reason for the dif-
10 ficulty in resolving such complaint in a
11 more timely fashion.

12 (3) DISCLOSURE OF REPORT ON OCC
13 WEBSITE.—Each report submitted to the Congress
14 under this subsection shall be posted, by the Comp-
15 troller of the Currency, in a timely fashion and
16 maintained on the website of the Office of the
17 Comptroller of the Currency on the World Wide
18 Web.

19 **TITLE II—SAVINGS** 20 **ASSOCIATIONS**

21 **SEC. 201. STATE LAW PREEMPTION STANDARDS FOR FED-**
22 **ERAL SAVINGS ASSOCIATIONS CLARIFIED.**

23 (a) IN GENERAL.—The Home Owners' Loan Act (12
24 U.S.C. 1461 et seq.) is amended by inserting after section
25 5 the following new section:

1 **“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FED-**
2 **ERAL SAVINGS ASSOCIATIONS AND AFFILI-**
3 **ATES CLARIFIED.**

4 “(a) STATE CONSUMER LAWS OF GENERAL APPLI-
5 CATION.—Notwithstanding any other provision of Federal
6 law, any consumer protection in State consumer law of
7 general application (including any law relating to unfair
8 or deceptive acts or practices, any consumer fraud law and
9 repossession, foreclosure, and collection) shall apply to any
10 Federal savings association.

11 “(b) STATE LAWS RELATED TO LAWS USED BY
12 FEDERAL SAVINGS ASSOCIATIONS FOR THEIR BEN-
13 EFIT.—When a Federal savings association avails itself of
14 a State law for its benefit, all related consumer protections
15 in State law shall apply.

16 “(c) STATE BANKING OR THRIFT LAWS ENACTED
17 PURSUANT TO FEDERAL LAW.—

18 “(1) IN GENERAL.—Notwithstanding any other
19 provision of Federal law and except as provided in
20 paragraph (2), any State law that—

21 “(A) is applicable to State savings associa-
22 tions (as defined in section 3 of the Federal De-
23 posit Insurance Act); and

24 “(B) was enacted pursuant to or in accord-
25 ance with, and is not inconsistent with, an Act
26 of Congress, including the Gramm-Leach-Bliley

1 Act, the Consumer Credit Protection Act, and
2 the Real Estate Settlement Procedures Act,
3 that explicitly or by implication, permits States
4 to exceed or supplement the requirements of
5 any comparable Federal law,
6 shall apply to any Federal savings association.

7 “(2) EXCEPTIONS.—Paragraph (1) shall not
8 apply with respect to any State law if—

9 “(A) the State law discriminates against
10 Federal savings associations; or

11 “(B) the State law is inconsistent with
12 provisions of Federal law other than this Act,
13 but only to the extent of the inconsistency (as
14 determined in accordance with the provision of
15 the other Federal law).

16 “(d) STATE LAWS PROTECTING AGAINST PREDATORY MORTGAGE LOANS.—To the extent not otherwise
17 addressed in this section, State laws providing greater protection in high cost mortgage loans, however denominated,
18 both in coverage and content, than is provided under the
19 Truth in Lending Act (including the provisions amended
20 by the Home Ownership and Equity Protection Act of
21 1994) shall apply to any Federal savings association.

22 “(e) COMPARABLE FEDERAL REGULATION REQUIRED.—In relation to the regulation of consumer credit
23
24
25

1 and deposit transactions, the Director of the Office of
2 Thrift Supervision may preempt State law pursuant to
3 this Act only when there is a comparable Federal statute,
4 or regulations pursuant to a Federal statute other than
5 this Act, expressly governing the activity, except in rela-
6 tion to interest pursuant to section 4(g).

7 “(f) NO NEGATIVE IMPLICATIONS FOR APPLICA-
8 BILITY OF OTHER STATE LAWS.—No provision of this
9 section shall be construed as altering or affecting the ap-
10 plicability, to Federal savings associations, of any State
11 law which is not described in this section.

12 “(g) EFFECT OF TRANSFER OF TRANSACTION.—A
13 transaction that is not entitled to preemption at the time
14 of the origination of the transaction does not become enti-
15 tled to preemption under this Act by virtue of its subse-
16 quent acquisition by a Federal savings association.

17 “(h) DENIAL OF PREEMPTION NOT A DEPRIVATION
18 OF A CIVIL RIGHT.—The preemption of any provision of
19 the law of any State with respect to any Federal savings
20 association shall not be treated as a right, privilege, or
21 immunity for purposes of section 1979 of the Revised
22 Statutes of the United States (42 U.S.C. 1983).

23 “(i) DEFINITION.—For purposes of this section, the
24 terms ‘includes’ and ‘including’ have the same meaning
25 as in section 3(t) of the Federal Deposit Insurance Act.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 for the Home Owners’ Loan Act (12 U.S.C. 1461 et seq.)
3 is amended by striking the item relating to section 6 and
4 inserting the following new item:

“6. State law preemption standards for Federal savings associations and affiliates clarified.”.

5 **SEC. 202. VISITORIAL STANDARDS.**

6 Section 6 of the Home Owners’ Loan Act (as added
7 by section 201(a) of this title) is amended by adding at
8 the end the following new subsections:

9 “(j) VISITORIAL POWERS.—No provision of this Act
10 shall be construed as limiting or restricting the authority
11 of any attorney general (or other chief law enforcement
12 officer) of any State to bring any action in any court of
13 appropriate jurisdiction—

14 “(1) to enforce any applicable Federal or State
15 law, as authorized by such law; or

16 “(2) on behalf of residents of such State, to en-
17 force any applicable provision of any Federal or
18 State law against a Federal savings association, as
19 authorized by such law, or to seek relief and recover
20 damages for such residents from any violation of any
21 such law by any Federal savings association.

22 “(k) ENFORCEMENT ACTIONS.—The ability of the
23 Director of the Office of Thrift Supervision to bring an
24 enforcement action under this Act or section 5 of the Fed-

1 eral Trade Commission Act does not preclude private par-
 2 ties from enforcing rights granted under Federal or State
 3 law in the courts.”.

4 **SEC. 203. CLARIFICATION OF LAW APPLICABLE TO STATE-**
 5 **CHARTERED NONDEPOSITORY INSTITUTION**
 6 **SUBSIDIARIES.**

7 Section 6 of the Home Owners’ Loan Act (as added
 8 by section 201(a) of this title) is amended by inserting
 9 after subsection (k) (as added by section 202) the fol-
 10 lowing new subsection:

11 “(1) CLARIFICATION OF LAW APPLICABLE TO NON-
 12 DEPOSITORY INSTITUTION AFFILIATES OF FEDERAL SAV-
 13 INGS ASSOCIATIONS.—

14 “(1) IN GENERAL.—No provision of this Act
 15 shall be construed as preempting the applicability of
 16 State law to any State-chartered nondepository insti-
 17 tution, subsidiary, other affiliate, or agent of a Fed-
 18 eral savings association.

19 “(2) DEFINITIONS.—For purposes of this sec-
 20 tion, the following definitions shall apply:

21 “(A) DEPOSITORY INSTITUTION, SUB-
 22 SIDIARY, AFFILIATE.—The terms ‘depository in-
 23 stitution’, ‘subsidiary’, and ‘affiliate’ have the
 24 same meanings as in section 3 of the Federal
 25 Deposit Insurance Act.

1 “(B) NONDEPOSITORY INSTITUTION.—The
2 term ‘nondepository institution’ means any enti-
3 ty that is not a depository institution.”.

4 **SEC. 204. DATA COLLECTION AND REPORTING.**

5 (a) COLLECTING AND MONITORING CONSUMER COM-
6 PLAINTS.—

7 (1) IN GENERAL.—The Director of the Office of
8 Thrift Supervision shall record and monitor each
9 complaint received directly or indirectly from a con-
10 sumer regarding a Federal savings association or
11 any subsidiary of a Federal savings association and
12 record the resolution of the complaint.

13 (2) FACTORS TO BE INCLUDED.—In carrying
14 out the requirements of paragraph (1), the Director
15 of the Office of Thrift Supervision shall include—

16 (A) the date the consumer complaint was
17 received;

18 (B) the nature of the complaint;

19 (C) when and how the complaint was re-
20 solved, including a brief description of the ex-
21 tent, and the results, of the investigation made
22 by the Director into the complaint, a brief de-
23 scription of any notices given and inquiries
24 made to any other Federal or State officer or
25 agency in the course of the investigation or res-

1 olution of the complaint, a summary of the en-
2 forcement action taken upon completion of the
3 investigation, and a summary of the results of
4 subsequent periodic reviews by the Comptroller
5 of the extent and nature of compliance by the
6 Federal savings association or subsidiary with
7 the enforcement action; and

8 (D) if the complaint involves any alleged
9 violation of a State law (whether or not Federal
10 law preempts the application of such State law
11 to such Federal savings association) by such
12 savings association, a cite to and a description
13 of the State law that formed the basis of the
14 complaint.

15 (b) REPORT TO THE CONGRESS.—

16 (1) PERIODIC REPORTS REQUIRED.—The Direc-
17 tor of the Office of Thrift Supervision shall submit
18 a report semi-annually to the Congress on the con-
19 sumer protection efforts of the Office of Thrift Su-
20 pervision.

21 (2) CONTENTS OF REPORT.—Each report sub-
22 mitted under paragraph (1) shall include the fol-
23 lowing:

24 (A) The total number of consumer com-
25 plaints received by the Director during the pe-

1 riod covered by the report with respect to al-
2 leged violations of consumer protection laws by
3 Federal savings associations and subsidiaries of
4 Federal savings associations.

5 (B) The total number of consumer com-
6 plaints received during the reporting period that
7 are based on each of the following:

8 (i) Each title of the Consumer Credit
9 Protection Act (reported as a separate ag-
10 gregate number for each such title).

11 (ii) The Truth in Savings Act.

12 (iii) The Right to Financial Privacy
13 Act of 1978.

14 (iv) The Expedited Funds Availability
15 Act.

16 (v) The Community Reinvestment Act
17 of 1977.

18 (vi) The Bank Protection Act of 1968.

19 (vii) The Home Owners' Loan Act.

20 (viii) The Federal Deposit Insurance
21 Act.

22 (ix) The Real Estate Settlement Pro-
23 cedures Act of 1974.

24 (x) The Home Mortgage Disclosure
25 Act of 1975.

1 (xi) Any other Federal law.

2 (xii) State consumer protection laws
3 (reported as a separate aggregate number
4 for each State and each State consumer
5 protection law).

6 (xiii) Any other State law (reported
7 separately for each State and each State
8 law).

9 (C) A summary description of the resolu-
10 tion efforts by the Director for complaints re-
11 ceived during the period covered, including—

12 (i) the average amount of time to re-
13 solve each complaint;

14 (ii) the median period of time to re-
15 solve each complaint;

16 (iii) the average and median time to
17 resolve complaints in each category of com-
18 plaints described in each clause of sub-
19 paragraph (B); and

20 (iv) a summary description of the
21 longest outstanding complaint during the
22 reporting period and the reason for the dif-
23 ficulty in resolving such complaint in a
24 more timely fashion.

1 (3) DISCLOSURE OF REPORT ON OTS
2 WEBSITE.—Each report submitted to the Congress
3 under this subsection shall be posted, by the Direc-
4 tor of the Office of Thrift Supervision, in a timely
5 fashion and maintained on the website of the Office
6 of Thrift Supervision on the World Wide Web.

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