

111TH CONGRESS
1ST SESSION

H. R. 2309

To provide authority to the Federal Trade Commission to expedite rulemakings concerning consumer credit or debt and to direct the Commission to examine and promulgate rules with regard to debt settlement and automobile sales, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 2009

Mr. RUSH (for himself, Ms. SCHAKOWSKY, and Ms. MATSUI) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To provide authority to the Federal Trade Commission to expedite rulemakings concerning consumer credit or debt and to direct the Commission to examine and promulgate rules with regard to debt settlement and automobile sales, 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 “Consumer Credit and
5 Debt Protection Act”.

1 **SEC. 2. FTC RULEMAKING RELATING TO CREDIT OR DEBT.**

2 (a) EXPEDITED RULEMAKING.—Section 18 of the
3 Federal Trade Commission Act (15 U.S.C. 57a) is amend-
4 ed by adding at the end the following new subsection:

5 “(k) Notwithstanding any other procedures set forth
6 in this section or section 22, for any rulemaking relating
7 to consumer credit or debt, the Commission shall conduct
8 such rulemaking in accordance with section 553 of title
9 5, United States Code, and the provisions for judicial re-
10 view of rules promulgated in accordance such section shall
11 apply to any rule promulgated in such a rulemaking.”.

12 (b) SPECIFIC RULEMAKINGS.—

13 (1) DEBT SETTLEMENT.—

14 (A) IN GENERAL.—The Federal Trade
15 Commission shall examine the practices of pro-
16 viders of debt settlement services and prescribe
17 such rules as the Commission determines nec-
18 essary (in accordance with section 553 of title
19 5, United States Code) in order to prevent un-
20 fair and deceptive acts or practices of providers
21 of such services. The Commission shall consider
22 adopting rules that—

23 (i) prohibit the charging of fees to
24 consumers prior to any debt settlement
25 service being fully rendered and limiting

1 fees that may be charged after a settle-
2 ment with a creditor is reached; and

3 (ii) require disclosures before a con-
4 tract is signed regarding the fee structure,
5 expected time frames for a successful set-
6 tlement, success rate of debtors in settling
7 their debts, information about creditor par-
8 ticipation in settlement plans, and the po-
9 tential impact on a consumer's credit
10 score.

11 (B) DEFINITION.—For purposes of sub-
12 paragraph (A), the term “debt settlement serv-
13 ice” means a commercial service provided to as-
14 sist consumers in managing and repaying con-
15 sumer debt, including the offering of advice or
16 acting as an intermediary between a debtor and
17 one or more of the debtor's creditors, where the
18 primary purpose of the advice or action is to
19 obtain a settlement for less than the full
20 amount of debt owed.

21 (2) AUTOMOBILE SALES.—The Federal Trade
22 Commission shall examine the practices of auto-
23 mobile dealers with respect to credit and lending and
24 shall prescribe such rules as the Commission deter-
25 mines necessary (in accordance with section 553 of

1 title 5, United States Code) in order to prevent un-
2 fair and deceptive acts or practices of such dealers.
3 The Commission shall consider adopting rules
4 that—

5 (A) restrict post-sale changes in financing
6 terms;

7 (B) require that automobile purchase
8 agreements or sales contracts entered into be-
9 tween a consumer and an automobile dealer in-
10 clude a provision which permits the consumer
11 to cancel the transaction within a specified pe-
12 riod following the sale or receipt of final infor-
13 mation concerning the terms of the sale or fi-
14 nancing; and

15 (C) limit the ability of automobile dealers
16 to accept or solicit compensation that is based
17 on the interest rate, annual percentage rate, or
18 the amount financed with respect to the sale of
19 an automobile and that is either—

20 (i) for the provision, procurement, or
21 arrangement of financing; or

22 (ii) for the sale, assignment, or trans-
23 fer of the installment sale contract.

24 (c) DEADLINE FOR RULEMAKINGS.—The Commis-
25 sion shall commence the rulemakings required under sub-

1 section (b) within 6 months after the date of enactment
2 of this Act.

3 **SEC. 3. AUTHORITY TO OBTAIN CIVIL PENALTIES IN CON-**
4 **NECTION WITH UNFAIR AND DECEPTIVE**
5 **ACTS OR PRACTICES RELATING TO CON-**
6 **SUMER CREDIT OR DEBT.**

7 Section 5(m)(1) of the Federal Trade Commission
8 Act (15 U.S.C. 45(m)(1)) is amended—

9 (1) by redesignating subparagraph (C) as sub-
10 subparagraph (D), and in such subparagraph (as so re-
11 designated), by striking “subparagraphs (A) and
12 (B)” and inserting “subparagraphs (A), (B), and
13 (C)”; and

14 (2) by inserting after subparagraph (B) the fol-
15 lowing new subparagraph:

16 “(C) The Commission may commence a
17 civil action to recover a civil penalty in a dis-
18 trict court of the United States against any
19 person, partnership, or corporation which en-
20 gages in any unfair or deceptive acts or prac-
21 tices in connection with consumer credit or debt
22 with actual knowledge or knowledge fairly im-
23 plied on the basis of objective circumstances
24 that such an act is unfair or deceptive. In such
25 action, such person, partnership, or corporation

1 shall be liable for a civil penalty as provided in
2 subparagraph (A).”.

3 **SEC. 4. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

4 (a) **IN GENERAL.**—Except as provided in subsection
5 (f), a State, as *parens patriae*, may bring a civil action
6 on behalf of its residents in an appropriate State or dis-
7 trict court of the United States to enforce the provisions
8 of the Federal Trade Commission Act or any other Act
9 enforced by the Federal Trade Commission to obtain pen-
10 alties and relief provided under such Acts whenever the
11 attorney general of the State has reason to believe that
12 the interests of the residents of the State have been or
13 are being threatened or adversely affected by a violation
14 of a rule prescribed under section 2(b) or any other rule
15 relating to consumer credit or debt promulgated by the
16 Federal Trade Commission.

17 (b) **NOTICE.**—The State shall serve written notice to
18 the Commission of any civil action under subsection (a)
19 at least 60 days prior to initiating such civil action. The
20 notice shall include a copy of the complaint to be filed
21 to initiate such civil action, except that if it is not feasible
22 for the State to provide such prior notice, the State shall
23 provide notice immediately upon instituting such civil ac-
24 tion.

1 (c) INTERVENTION BY FTC.—Upon receiving the no-
2 tice required by subsection (b), the Commission may inter-
3 vene in such civil action and upon intervening—

4 (1) be heard on all matters arising in such civil
5 action;

6 (2) remove the action to the appropriate United
7 States district court; and

8 (3) file petitions for appeal of a decision in such
9 civil action.

10 (d) SAVINGS CLAUSE.—Nothing in this section shall
11 prevent the attorney general of a State from exercising
12 the powers conferred on the attorney general by the laws
13 of such State to conduct investigations or to administer
14 oaths or affirmations or to compel the attendance of wit-
15 nesses or the production of documentary and other evi-
16 dence. Nothing in this section shall prohibit the attorney
17 general of a State, or other authorized State officer, from
18 proceeding in State or Federal court on the basis of an
19 alleged violation of any civil or criminal statute of that
20 State.

21 (e) VENUE; SERVICE OF PROCESS; JOINDER.—In a
22 civil action brought under subsection (a)—

23 (1) the venue shall be a judicial district in
24 which the lender or a related party operates or is au-
25 thorized to do business;

1 (2) process may be served without regard to the
2 territorial limits of the district or of the State in
3 which the civil action is instituted; and

4 (3) a person who participated with a lender or
5 related party to an alleged violation that is being
6 litigated in the civil action may be joined in the civil
7 action without regard to the residence of the person.

8 (f) PREEMPTIVE ACTION BY FTC.—Whenever a civil
9 action or an administrative action has been instituted by
10 or on behalf of the Commission for violation of any rule
11 described under subsection (a), no State may, during the
12 pendency of such action instituted by or on behalf of the
13 Commission, institute a civil action under subsection (a)
14 against any defendant named in the complaint in such ac-
15 tion for violation of any rule as alleged in such complaint.

16 (g) AWARD OF COSTS AND FEES.—If the attorney
17 general of a State prevails in any civil action under sub-
18 section (a), the State can recover reasonable costs and at-
19 torney fees from the lender or related party.

○