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112TH CONGRESS
2D SESSION

S. 3426

To amend the Truth in Lending Act to address certain issues related to the extension of consumer credit, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 24, 2012

Mr. MERKLEY (for himself, Mr. UDALL of New Mexico, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

To amend the Truth in Lending Act to address certain issues related to the extension of consumer credit, 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 ''Stopping Abuse and Fraud in Electronic Lending Act of 2012'' or the ''SAFE Lending Act of 2012''.

SEC. 2. CONSUMER CONTROL OVER BANK ACCOUNTS.

(a) PROHIBITING UNAUTHORIZED REMOTELY CREATED CHECKS.—Section 905 of the Electronic Fund

Transfer Act (15 U.S.C. 1693c) is amended by adding at the end the following:

"(d) LIMITATIONS ON REMOTELY CREATED CHECKS.—

"(1) IN GENERAL.—Subject to the limitations set forth under paragraph (2) and any additional limitations that the Bureau may establish, by rule, a remotely created check may only be issued by a person designated in writing by the consumer, such designation specifically provided in writing by the consumer to the insured depository institution at which the consumer maintains the account from which the check is to be drawn.

"(2) ADDITIONAL LIMITATIONS.—

"(A) IN GENERAL.—An authorization provided under paragraph (1) may be revoked at any time by the consumer.

"(B) CONSUMER FINANCIAL PROTECTION LAWS.—No payment order, including a remotely created check, may be issued by any person in response to the exercise of, or attempt to exercise, any rights by a consumer under any Federal consumer financial law (as defined in section 1002(14) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481(14)))

or any other provision of any law or regulation within the jurisdiction of the Bureau.

"(3) REMOTELY CREATED CHECK DEFINED.—For purposes of this subsection, the term 'remotely created check' means a check (including paper and electronic checks and any other payment order that the Bureau, by rule, determines is appropriately covered by this subsection) that—

"(A) is not created by the financial institution that holds the customer account from which the check is to be paid; and

"(B) does not bear a signature applied, or purported to be applied, by the person from whose account the check is to be paid.".

(b) CONSUMER PROTECTIONS FOR CERTAIN ONE-TIME ELECTRONIC FUND TRANSFERS.—Section 913 of the Electronic Fund Transfer Act (15 U.S.C. 1693k) is amended—

(1) by inserting "(a) IN GENERAL.—" before "No person";

(2) striking "preauthorized electronic fund transfers" and inserting "an electronic fund transfer"; and

(3) by adding at the end the following:

"(b) TREATMENT FOR ELECTRONIC FUND TRANSFERS IN CREDIT EXTENSIONS.—If a consumer voluntarily agrees to repay an extension of small-dollar consumer credit transaction (as defined in section 140B(b) of the Truth in Lending Act) by means of an electronic fund transfer, such electronic fund transfer shall be treated as a preauthorized electronic fund transfer subject to the protections of this title.".

SEC. 3. CONSISTENT APPLICATION OF LAW FOR SMALL-DOLLAR LENDING.

Chapter 2 of the Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by adding at the end the following:

"SEC. 140B. CONSISTENT APPLICATION OF LAW FOR SMALL-DOLLAR LENDING.

"(a) IN GENERAL.—Notwithstanding any other provision of law or any agreement between the parties to a transaction, and except to the extent that Federal or tribal law affords greater protection to the consumer, any small-dollar consumer credit transaction made over the Internet, telephone, facsimile, mail, electronic mail, or other electronic communication and any small-dollar consumer credit transaction conducted by an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) shall comply with the laws of the State in which

the consumer resides with respect to annual percentage rates, interest, fees, charges, and such other similar or related matters as the Bureau may, by rule, determine.

"(b) DEFINITION.—As used in this section, the term 'small-dollar consumer credit transaction' means any transaction that extends, facilitates, brokers, arranges, or gathers applications for credit that is—

"(1) made to a consumer in an amount of not more than $5,000, or such greater amount as the Bureau may, by rule, determine, such amount to be adjusted annually to reflect changes in the Consumer Price Index for all urban consumers published by the Department of Labor; and

"(2) extended pursuant to an agreement that is—

"(A) other than an open-end credit plan and is payable in one or more installments of less than 12 months (or such longer period as the Bureau may, by rule, determine);

"(B) an open-end credit plan in which each advance is fully repayable within a defined time or in connection with a defined event, or both; or

"(C) such other plan as the Bureau determines, by rule.".

SEC. 4. PROHIBITION ON LEAD GENERATION AND ANONYMITY IN SMALL-DOLLAR CONSUMER CREDIT TRANSACTIONS.

Chapter 2 of the Truth in Lending Act (15 U.S.C. 1601 et seq.), as amended by this Act, is amended by adding at the end the following:

"SEC. 140C. PROHIBITION ON LEAD GENERATION AND ANONYMITY IN SMALL-DOLLAR CONSUMER CREDIT TRANSACTIONS.

"(a) IDENTIFICATION INFORMATION.—Any person engaged in the business of facilitating, brokering, arranging, gathering applications for, distributing sensitive personal financial information, or extending credit in connection with small-dollar consumer credit transactions shall prominently disclose information by which they may be contacted or identified, including for service of process and for identification of the registrant of any domain name registered or used.

"(b) PROHIBITION ON LEAD GENERATION IN SMALL-DOLLAR CONSUMER CREDIT TRANSACTIONS.—No person may engage in the business of facilitating, brokering, arranging, gathering applications for, or distributing sensitive personal financial information in connection with small-dollar consumer credit transactions, unless the person is directly extending the small-dollar consumer credit to the consumer.

"(c) DEFINITIONS.—For purposes of this section—

"(1) the term 'sensitive personal financial information' means the consumer's Social Security number, financial account number, bank routing number, bank account number, or any required security or access code that are immediately necessary to permit access to the financial account of an individual; and

"(2) the term 'small-dollar consumer credit transaction' has the same meaning as in section 140B(b).

"(d) RULE OF CONSTRUCTION.—

"(1) IN GENERAL.—Nothing in this section may be interpreted to limit the authority of the Bureau to further restrict activities covered by this section.

"(2) CLARIFICATION.—It shall not be considered 'facilitating' in connection with small-dollar consumer credit transactions to be engaged solely in—

"(A) the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231 of the Communications Act of 1934 (47 U.S.C. 231)); or

"(B) the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of the Communications Act of 1934 (47 U.S.C. 230(c)).

"(e) CIVIL LIABILITY.—Violations of this section shall be subject to the civil liability provisions of section 130, and any person who violates this section shall be treated as a creditor for purposes of section 130.".

SEC. 5. ENHANCED ENFORCEMENT AUTHORITY AGAINST CERTAIN INTERNET LENDING.

The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by inserting after section 108 the following:

"SEC. 108A. ENHANCED ENFORCEMENT AUTHORITY AGAINST CERTAIN INTERNET LENDING.

"(a) DEFINITIONS.—In this section, the following definitions shall apply:

"(1) COMPLAINANT.—The term 'complainant' means a State attorney general or State or tribal agency with enforcement authority over prohibited

activity who files a complaint with the Bureau under subsection (d).

"(2) COVERED OFFSHORE PERSON.—

"(A) IN GENERAL.—The term 'covered offshore person' means a person (and if such person is not known, the Internet site or other electronic representation of such person, such as a telephone number, text message service, or mobile application) that—

"(i) conducts business directed to residents of the United States;

"(ii) does not have a domain name that is registered or assigned by a domain name registrar, domain name registry, or other domain name registration authority that is located within a judicial district of the United States; and

"(iii) is not operated by an entity that is located within a judicial district of the United States.

"(B) BUSINESS DIRECTED TO RESIDENTS OF THE UNITED STATES.—For purposes of making a determination under subparagraph (A)(i), the Bureau may consider, among other indicators, whether—

"(i) the person extends, facilitates, brokers, arranges, or gathers applications for credit to persons located in the United States;

"(ii) the person has reasonable measures in place to prevent its services from being accessed from or delivered to the United States; and

"(iii) any prices for goods and services provided are indicated in the currency of the United States.

"(3) COVERED ONSHORE PERSON.—The term 'covered onshore person' means a State government or an Indian tribe.

"(4) COVERED PERSON.—The term 'covered person' means a covered offshore person and covered onshore person.

"(5) FEDERAL CONSUMER FINANCIAL LAW.—The term 'Federal consumer financial law' has the same meaning as in section 1002 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481).

"(6) FINANCIAL TRANSACTION PROVIDER.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'financial trans-

action provider' has the same meaning as in section 5362(4) of title 31, United States Code.

"(B) EXCEPTION.—The term 'financial transaction provider' does not include an Internet service platform or an affiliate of an Internet service platform.

"(7) INDIAN TRIBE.—The term 'Indian tribe' has the same meaning as in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

"(8) INTERNET SERVICE PLATFORM.—The term 'Internet service platform' means an interactive digital service the provider of which—

"(A) does not act merely as a payment intermediary between a user and a supplier of goods or services; and

"(B) provides additional services to facilitate interaction between users unrelated to purchases from suppliers of goods and services.

"(9) INTERNET SITE.—The term 'Internet site' means the collection of digital assets, including links, indexes, or pointers to digital assets, accessible through the Internet that are addressed relative to a common domain name.

"(10) OPERATOR.—The term 'operator', when used in connection with an Internet site, includes any person with authority to operate the Internet site.

"(11) OWNER.—The term 'owner', when used in connection with an Internet site, includes any owner of a majority interest in the Internet site.

"(12) STATE CONSUMER FINANCIAL LAW.—The term 'State consumer financial law' means a provision of State law that either constitutes a 'State consumer financial law' as that term is defined in section 5136C of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.), or prohibits unfair or deceptive acts or practices.

"(b) APPLICABILITY OF SECTION.—It shall be a violation of this section for a covered person to violate a Federal, State, or tribal consumer financial law.

"(c) INVESTIGATION OF VIOLATIONS BY BUREAU.—

"(1) IN GENERAL.—The Bureau—

"(A) may investigate any alleged violation of subsection (b) on its own initiative; and

"(B) shall—

"(i) review any alleged violation of subsection (b) upon receiving a complaint filed under subsection (d); and

"(ii) adjudicate and otherwise investigate and respond to such complaint, as appropriate.

"(2) CONSULTATIONS.—In taking action under paragraph (1), the Bureau shall, as the Bureau determines appropriate, consult with and seek advice and information from the Attorney General of the United States, the Federal Trade Commission, the International Trade Commission (in any case involving a covered offshore person), the Bureau of Indian Affairs (in the case of matters involving an Indian tribe), federally recognized Indian tribes (in the case of rulemakings involving Indian tribes), and such other agencies and officials as the Bureau considers appropriate.

"(3) LIMITATION ON INVESTIGATIONS OF DOMAIN NAMES; CONSENT TO JURISDICTION.—

"(A) IN GENERAL.—Subject to subparagraphs (B) and (C) and such limitations as the Bureau may, by rule, determine, the Bureau shall terminate, or not initiate, an investigation or adjudication under paragraph (1) with respect to a covered person—

"(i) if the covered person provides to the public and to the Bureau—

"(I) the name of an individual authorized to receive process on behalf of the covered person;

"(II) an address at which process may be served;

"(III) a telephone number at which the individual described in clause (i) may be contacted; and

"(IV) a statement that the covered person consents to the jurisdiction and venue of the United States district courts with respect to a violation of the relevant consumer lending laws.

"(B) ACCEPTANCE OF JURISDICTION.—In the event of the filing of any civil action in the appropriate United States district court for a violation of State or tribal consumer lending laws, the covered person shall accept service and waive, in a timely manner, any objections to jurisdiction, as set forth in the statement described in subparagraph (A)(iv).

"(C) INVESTIGATIONS.—Any limitations on investigations under this paragraph shall not apply if—

"(i) any of the information provided by the covered person is inaccurate in any way; or

"(ii) at any point, the covered person fails to respond to or abide by any order or request of the relevant court.

"(4) RULE OF CONSTRUCTION.—It shall not be considered a violation of this section to be engaged solely in—

"(A) the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231 of the Communications Act of 1934 (47 U.S.C. 231)); or

"(B) the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of the Communications Act of 1934 (47 U.S.C. 230(c)).

"(d) COMPLAINTS.—

"(1) IN GENERAL.—A complaint alleging, under oath, that a covered person is in violation of subsection (b) may be filed with the Bureau.

"(2) NOTICE WITH RESPECT TO OFFSHORE PERSONS.—

"(A) IN GENERAL.—Upon filing a complaint under paragraph (1), if the identity of the subject covered offshore person is not known, but the Internet site or other electronic representation is known, the complainant shall send a notice of the violation alleged in the complaint to the registrant of the domain name of the Internet site (or relevant operator of the electronic representation) alleged to be operated or maintained in violation of subsection (b)—

"(i) at the postal and e-mail addresses appearing in the applicable publicly accessible database of registrations, if any, to the extent such addresses are reasonably available;

"(ii) via the postal and e-mail addresses of the registrar, registry, or other domain name registration authority that registered or assigned the domain name (or relevant electronic representation), to

the extent such addresses are reasonably available; and

"(iii) in any other such form as the Bureau finds necessary.

"(B) RULE OF CONSTRUCTION.—For purposes of this subsection, the actions described in this subparagraph shall constitute service of process.

"(3) IDENTIFICATION OF, AND NOTICE TO, ENTITIES THAT MAY BE REQUIRED TO TAKE ACTION PURSUANT TO THIS SECTION.—

"(A) IDENTIFICATION.—A complaint filed under paragraph (1) shall identify any financial transaction provider that may be required to take measures described in subsection (g)(2) if the Bureau issues an order under subsection (f) with respect to the complaint and the order is served on the provider or service pursuant to subsection (g)(1).

"(B) NOTICE.—Upon filing a complaint under paragraph (1), the complainant shall provide notice to any financial transaction provider identified in the complaint pursuant to subparagraph (A) or any amendments to the complaint.

"(C) INTERVENTION.—

"(i) IN GENERAL.—A financial transaction provider or identified in a complaint pursuant to subparagraph (A) may intervene upon timely request filed with the Bureau in—

"(I) an investigation initiated under subsection (c) pursuant to the complaint; or

"(II) pursuant to subsection (f)(3), an action to modify, suspend, or vacate an order issued pursuant to the complaint.

"(ii) RULE OF CONSTRUCTION.—Failure to intervene under clause (i) in an investigation under subsection (c) does not preclude a financial transaction provider notified of the investigation from subsequently seeking an order to modify, suspend, or vacate an order issued by the Bureau under subsection (f).

"(e) DETERMINATIONS.—

"(1) IN GENERAL.—Unless waived in writing by the covered person, the Bureau shall determine, with respect to each investigation initiated under subsection (c) and not otherwise terminated subject to

the provisions of this section, whether the covered person under investigation is in violation of subsection (b).

"(2) EFFECTIVE DATE.—A determination made under paragraph (1) shall take effect on the date on which the Bureau publishes the determination in the Federal Register.

"(3) ELECTRONIC SUBMISSION OF INFORMATION AND PROCEEDINGS.—The Bureau may, in making any determination under this section—

"(A) allow the submission of information electronically; and

"(B) hold hearings electronically or obtain testimony or other information electronically or by such means as the Bureau determines allows participation in proceedings under this section at as low a cost as possible to participants in the proceedings.

"(f) CEASE AND DESIST ORDERS.—

"(1) IN GENERAL.—If the Bureau determines under subsection (e) that a covered person is in violation of subsection (b), in addition to any actions which the Bureau may otherwise take, the Bureau may—

"(A) issue an order to cease and desist from the violation of subsection (b) to the covered person (and if the identity of the subject covered offshore person is not known, to the relevant Internet site and to the owner and the operator of the Internet site or relevant electronic representation); and

"(B) cause the order to be served on the covered person.

"(2) TEMPORARY AND PRELIMINARY CEASE AND DESIST ORDERS.—

"(A) PETITION BY COMPLAINANT.—A complainant may file with the Bureau a petition, in accordance with this paragraph, for the issuance of a temporary or preliminary order.

"(B) OPPORTUNITY TO BE HEARD.—

"(i) IN GENERAL.—Before issuing a temporary or preliminary cease and desist order under this paragraph, the Bureau shall provide to any person (including any applicable Internet site or electronic representation and the owner and the operator of such Internet site or electronic representation) alleged to be in violation of subsection (b) an opportunity to be heard

and to submit relevant information to the Bureau.

"(ii) ELECTRONIC SUBMISSION OF INFORMATION AND PROCEEDINGS.—The Bureau may provide an opportunity to be heard and to submit information under clause (i) electronically or in such other manner as the Bureau determines appropriate.

"(C) ISSUANCE OF ORDER.—If, upon receiving a petition under subparagraph (A) and after providing an opportunity to be heard under subparagraph (B), the Bureau determines that the covered person is in violation of subsection (b), in addition to any actions which the Director may otherwise take, the Bureau may issue a temporary or preliminary cease and desist order against, and cause the order to be served on the relevant person pursuant to paragraph (1).

"(D) STANDARD FOR RELIEF.—If the Bureau issues a temporary or preliminary cease and desist order under this paragraph, the order shall be issued in a manner consistent with the provisions of rule 65 of the Federal

Rules of Civil Procedure, or any successor thereto, relating to preliminary injunctions and temporary restraining orders.

"(E) PROCEDURES FOR TEMPORARY CEASE AND DESIST ORDER.—

"(i) EXPEDITED CONSIDERATION.—Upon a showing of extraordinary circumstances by the complainant filing a petition for a temporary cease and desist order under subparagraph (A), the Bureau may make a determination with respect to the petition on an expedited basis.

"(ii) EXPIRATION OF ORDER.—

"(I) IN GENERAL.—Except as provided in subclause (II), a temporary cease and desist order issued under this paragraph shall expire at a time determined by the Bureau that is not later than 14 days after the issuance of the order.

"(II) EXTENSION OF ORDER.—The Bureau may extend a temporary cease and desist order issued under this paragraph for additional periods of not more than 14 days for good

cause or with the consent of the entity against which the order is issued.

"(F) PROCEDURES FOR PRELIMINARY CEASE AND DESIST ORDER.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Bureau shall make a determination with respect to a petition for a preliminary cease and desist order not later than 30 days after the Bureau publishes notice of the initiation of an investigation under subsection (c) in the Federal Register.

"(ii) EXTENSIONS OF TIME FOR DETERMINATION.—The Bureau may extend the date by which the Bureau is required to make a determination under clause (i) with respect to a petition for a preliminary cease and desist order for an additional 30 days, if the Bureau—

"(I) determines that the petition presents a more complicated case; and

"(II) publishes in the Federal Register an explanation of why the Bureau determined that the case is more complicated under subclause (I).

"(3) MODIFICATION OR REVOCATION OF ORDERS.—

"(A) IN GENERAL.—At any time after the issuance of an order under this subsection, a motion to modify, suspend, or vacate the order may be filed by—

"(i) any covered person, bound by the order;

"(ii) the owner or operator of any Internet site or electronic representation subject to the order;

"(iii) any domain name registrar or registry that has registered or assigned the domain name of the Internet site subject to the order; or

"(iv) a financial transaction provider on which a copy of an order has been served pursuant to paragraph (1) of subsection (g) requiring the provider or service to take action described in paragraph (2) of that subsection.

"(B) RELIEF.—The Bureau shall modify, suspend, or vacate an order, as appropriate, if the Bureau determines that—

"(i) the subject to the order is no longer, or never was in violation of subsection (b); or

"(ii) the interests of justice require that the order be modified, suspended, or vacated.

"(C) CONSIDERATION.—In making a determination under subparagraph (B), the Bureau may consider whether any domain name of an Internet site (or the relevant electronic representation) subject to the order has expired or has been re-registered by a different entity.

"(4) AMENDMENT OF ORDERS.—A complainant may petition the Bureau to amend an order issued under this subsection if any relevant Internet site or electronic representation determined under subsection (e) to be in violation of subparagraph (B) is accessible or has been reconstituted at a different domain name.

"(5) OPPORTUNITY TO BE HEARD FOR CERTAIN ENTITIES.—Before the Bureau issues an order under this subsection or modifies, suspends, vacates, or amends such an order under paragraph (3) or (4), a financial transaction provider that intervened pursuant to subsection (d)(3) in an investigation or

action relating to the order shall have an opportunity to be heard before the Bureau with respect to whether the Bureau should issue the order and the scope of relief available under the order or whether the Bureau should modify, suspend, vacate, or amend the order, as the case may be.

"(6) EXPIRATION OF ORDERS WITH RESPECT TO INTERNET SITE.—An order issued under this subsection against an Internet site (or relevant electronic representation) shall cease to have any force or effect upon expiration of the registration of the domain name of the Internet site (or relevant electronic representation).

"(g) REQUIRED ACTIONS BASED ON BUREAU ORDERS.—

"(1) IN GENERAL.—If the Bureau reasonably believes that a financial transaction provider identified in a complaint pursuant to subsection (d)(3), or any amendment to the complaint, supplies services to the covered person that is subject to the order issued under subsection (f) with respect to the complaint—

"(A) the Bureau may give permission to the complainant to serve a copy of the order on the financial transaction provider;

"(B) if the Bureau gives permission to the complainant under subparagraph (A), the complainant shall file proof of service with the Bureau; and

"(C) upon receiving a copy of the order pursuant to subparagraph (A), the financial transaction provider shall implement the measures described in paragraph (2).

"(2) MEASURES TO BE IMPLEMENTED BY FINANCIAL TRANSACTION PROVIDERS.—

"(A) IN GENERAL.—Subject to subparagraph (B), a financial transaction provider shall, as expeditiously as is reasonable, take reasonable and technically feasible measures, as expeditiously as reasonable, designed to prevent or prohibit the completion of payment transactions by the provider that involve customers located in the United States and the covered person (including the relevant Internet site or electronic representation) subject to the order issued under subsection (f).

"(B) LIMITATIONS ON MEASURES.—A financial transaction provider may not be required pursuant to subparagraph (A)—

"(i) to implement measures that are not commercially reasonable;

"(ii) to modify services or facilities of the provider to comply with the order issued under subsection (f); or

"(iii) to prevent or prohibit the completion of a payment transaction if the provider could not reasonably determine in advance whether the entity was using the Internet site subject to the order.

"(3) COMMUNICATION WITH USERS.—A financial transaction provider required to implement measures described in paragraph (2) shall determine how to communicate with the users or customers of the provider or service, as the case may be, with respect to those measures.

"(4) RULES OF CONSTRUCTION.—

"(A) LIMITATION ON OBLIGATIONS.—A financial transaction provider required to implement measures described in paragraph (2) shall not be required to take measures or actions in addition to the measures described in paragraph (2) pursuant to this section or an order issued under this section.

"(B) MANNER OF COMPLIANCE.—A financial transaction provider required to implement measures described in paragraph (2) shall be in compliance with this subsection if the provider implements the measures described in that paragraph with respect to accounts of the provider, as of the date on which a copy of an order is served under paragraph (1) or, if applicable, the date on which the order is modified or amended under paragraph (3) or (4) of subsection (f).

"(5) ACTIONS PURSUANT TO BUREAU ORDER.—

"(A) IMMUNITY FROM CIVIL ACTIONS.—No cause of action shall lie in any court against a financial transaction provider on which a copy of an order is served under paragraph (1), or against any director, officer, employee, or agent thereof, other than in an action pursuant to subsection (h), for—

"(i) any act reasonably designed to comply with this subsection or reasonably arising from the order; or

"(ii) any act, failure, or inability to meet the obligations under this subsection of the provider or service if the provider or

service, as the case may be, makes a good faith effort to comply with such obligations.

"(B) IMMUNITY FROM LIABILITY.—A financial transaction provider on which a copy of an order is served under paragraph (1), and any director, officer, employee, or agent thereof, shall not be liable to any person for any acts reasonably designed to comply with this subsection or reasonably arising from the order, other than in an action pursuant to subsection (h).

"(C) IMMUNITY FROM ACTIONS OF THIRD PARTIES.—An action taken by a third party to circumvent any measures implemented pursuant to an order served on a financial transaction provider under paragraph (1) may not be used by any person in any claim or cause of action against the provider or service, as the case may be, other than in an action pursuant to subsection (h).

"(h) ENFORCEMENT OF ORDERS.—

"(1) IN GENERAL.—In order to compel compliance with this section, the Bureau and any State Attorney General (or other appropriate State or tribal

entity) having enforcement authority over prohibited activity may bring an action for injunctive relief against any person subject to an order issued under subsection (f) or on which such an order is served under subsection (g) that fails to comply with the order.

"(2) RULE OF CONSTRUCTION.—The authority granted to the Bureau, State, and tribal authorities under paragraph (1) shall be the sole legal remedy for enforcing the obligations under subsection (g) of a financial transaction provider on which an order is served under paragraph (1) of that subsection.

"(3) AFFIRMATIVE DEFENSES.—A defendant in an action commenced under paragraph (1) may establish an affirmative defense by showing that the defendant does not have the technical means to comply with this section without incurring an unreasonable economic burden or that the order is inconsistent with this section. That showing shall serve as a defense only to the extent of the inability of the defendant to comply or to the extent of the inconsistency.

"(i) SANCTIONS FOR ABUSE OF PROCESS AND DISCOVERY.—The Bureau may, by rule, prescribe sanctions for abuse of process in a manner consistent with the provi-

sions of rule 11 and rule 37 of the Federal Rules of Civil Procedure.

"(j) IMMUNITY FOR ENFORCEMENT OF ORDERS.—No cause of action shall lie in any court, no person may rely on any claim or cause of action, and no liability for damages to any person shall be granted, against a financial transaction provider for taking any action pursuant to subsection (g)(2).

"(k) SAVINGS CLAUSE.—Nothing in this section, including subsection (c), may be construed to limit the authority or jurisdiction of the Bureau, any other Federal agency, or any State or tribe to review, regulate, investigate, enforce against, or otherwise restrict activities covered by this section.".

SEC. 6. STUDIES.

Not later than 180 days after enactment of this section, the Government Accountability Office (in this section referred to as the "GAO") shall conduct a study regarding the availability of capital on reservations of Indian tribes (as such term is defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) and the impact that small-dollar consumer credit extended through Internet and non-Internet means to members of Indian tribes has had on economic opportunity and wealth for members of Indian tribes. In conducting

the study, the GAO shall consult, as appropriate, with the Bureau of Consumer Financial Protection, the Board of Governors of the Federal Reserve System, the Bureau of Indian Affairs, federally recognized Indian tribes, and community development financial institutions operating in Indian lands. The report shall be presented to the Committee on Banking, Housing, and Urban Affairs and the Committee on Indian Affairs of the Senate and the Committee on Financial Services and the Committee on Natural Resources of the House of Representatives.

SEC. 7. RULEMAKING.

Not later than 1 year after the date of enactment of this Act, the Bureau shall adopt any final rules necessary to implement the provisions of this Act and the amendments made by this Act.

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