

115TH CONGRESS  
1ST SESSION

# S. 1642

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.

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## IN THE SENATE OF THE UNITED STATES

JULY 27, 2017

Mr. WARNER (for himself, Mr. TOOMEY, Mr. PETERS, and Mr. DAINES) 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 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.

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 “Protecting Consumers’  
5 Access to Credit Act of 2017”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1           (1) the contractual doctrine of valid-when-made  
2 provides, when applied to lending agreements, that  
3 a loan that is valid at inception cannot become usu-  
4 rious upon the subsequent sale or transfer of the  
5 loan to another person;

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

16           (3) in 2016, the Solicitor General of the United  
17 States, in consultation with all Federal banking reg-  
18 ulators, filed an amicus brief in the case of *Midland*  
19 *Funding, LLC v. Madden*, 136 S. Ct. 2505 (2016)  
20 (mem.), denying cert. to 786 F.3d 246, (2d Cir.  
21 2015), that described the United States Court of  
22 Appeals for the Second Circuit in that case as “in-  
23 correct” with an “analysis reflect[ing] a misunder-  
24 standing” of section 85 of the National Bank Act  
25 and precedent of the Supreme Court of the United

1 States because the analysis contradicted the contrac-  
2 tual doctrine of valid-when-made;

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

9 (5) a joint academic study by professors at  
10 Stanford, Fordham, and Columbia Universities con-  
11 cluded that the *Madden v. Midland* decision has al-  
12 ready disproportionately affected low- and moderate-  
13 income individuals in the United States with lower  
14 FICO scores; and

15 (6) if the valid-when-made doctrine is not re-  
16 affirmed soon by Congress, the lack of access to safe  
17 and affordable financial services will force the house-  
18 holds in the United States with the fewest resources  
19 to seek financial products that are nontransparent,  
20 fail to inform consumers about the terms of credit  
21 available, and do not comply with State and Federal  
22 laws, including regulations.

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

24 (a) AMENDMENT TO THE REVISED STATUTES.—Sec-  
25 tion 5197 of the Revised Statutes (12 U.S.C. 85) is

1 amended by adding at the end the following: “A loan that  
2 is valid when made as to its maximum rate of interest  
3 in accordance with this section shall remain valid with re-  
4 spect to such rate regardless of whether the loan is subse-  
5 quently sold, assigned, or otherwise transferred to a third  
6 party, and may be enforced by such third party notwith-  
7 standing any State law to the contrary.”.

8 (b) AMENDMENT TO THE HOME OWNERS’ LOAN  
9 ACT.—Section 4(g) of the Home Owners’ Loan Act (12  
10 U.S.C. 1463(g)) is amended by adding at the end the fol-  
11 lowing:

12 “(3) A loan that is valid when made as to its max-  
13 imum rate of interest in accordance with this subsection  
14 shall remain valid with respect to such rate regardless of  
15 whether the loan is subsequently sold, assigned, or other-  
16 wise transferred to a third party, and may be enforced  
17 by such third party notwithstanding any State law to the  
18 contrary.”.

19 (c) AMENDMENT TO THE FEDERAL CREDIT UNION  
20 ACT.—Section 205(g) of the Federal Credit Union Act (12  
21 U.S.C. 1785(g)) is amended by adding at the end the fol-  
22 lowing:

23 “(3) A loan that is valid when made as to its max-  
24 imum rate of interest in accordance with this subsection  
25 shall remain valid with respect to such rate regardless of

1 whether the loan is subsequently sold, assigned, or other-  
2 wise transferred to a third party, and may be enforced  
3 by such third party notwithstanding any State law to the  
4 contrary.”.

5 (d) AMENDMENT TO THE FEDERAL DEPOSIT INSUR-  
6 ANCE ACT.—Section 27 of the Federal Deposit Insurance  
7 Act (12 U.S.C. 1831d) is amended by adding at the end  
8 the following:

9 “(e) A loan that is valid when made as to its max-  
10 imum rate of interest in accordance with this section shall  
11 remain valid with respect to such rate regardless of wheth-  
12 er the loan is subsequently sold, assigned, or otherwise  
13 transferred to a third party, and may be enforced by such  
14 third party notwithstanding any State law to the con-  
15 trary.”.

16 **SEC. 4. RULE OF CONSTRUCTION.**

17 Nothing in this Act may be construed as limiting the  
18 authority or jurisdiction of the Office of the Comptroller  
19 of the Currency, the Federal Deposit Insurance Corpora-  
20 tion, the Board of Governors of the Federal Reserve Sys-  
21 tem, the Bureau of Consumer Financial Protection, or the  
22 National Credit Union Administration.

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