

115TH CONGRESS  
2D SESSION

# H. R. 3299

---

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2018

Received; read twice and referred to the Committee on Banking, Housing, and  
Urban Affairs

---

## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

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

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

21 (3) in 2016, the Solicitor General, in consulta-  
22 tion with all Federal banking regulators, filed an  
23 amicus brief in the case of *Midland Funding, LLC*  
24 *v. Madden*, 136 S. Ct. 2505 (2016) (mem.), denying  
25 cert. to 786 F.3d 246 (2d Cir. 2015), that described  
26 the United States Court of Appeals for the Second

1 Circuit in that case “incorrect” with an “analysis  
2 reflect[ing] a misunderstanding” of section 85 of the  
3 National Bank Act and Supreme Court precedent,  
4 because it contradicted the contractual doctrine of  
5 valid when made;

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

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

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

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

2 (a) AMENDMENT TO THE REVISED STATUTES.—Sec-  
3 tion 5197 of the Revised Statutes (12 U.S.C. 85) is  
4 amended by adding at the end the following: “A loan that  
5 is valid when made as to its maximum rate of interest  
6 in accordance with this section shall remain valid with re-  
7 spect to such rate regardless of whether the loan is subse-  
8 quently sold, assigned, or otherwise transferred to a third  
9 party, and may be enforced by such third party notwith-  
10 standing any State law to the contrary.”.

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

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

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

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

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

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

19 **SEC. 4. RULE OF CONSTRUCTION.**

20       Nothing in this Act may be construed as limiting the  
21 authority or jurisdiction of the Office of the Comptroller  
22 of the Currency, the Federal Deposit Insurance Corpora-  
23 tion, the Board of Governors of the Federal Reserve Sys-

1 tem, the Bureau of Consumer Financial Protection, or the  
2 National Credit Union Administration.

Passed the House of Representatives February 14,  
2018.

Attest:

KAREN L. HAAS,

*Clerk.*