

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 2309  
OFFERED BY MR. RUSH**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Consumer Credit and  
3 Debt Protection Act”.

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

5       (a) RULEMAKING.—Section 18 of the Federal Trade  
6 Commission Act (15 U.S.C. 57a) is amended by adding  
7 at the end the following new subsection:

8       “(k) Notwithstanding any other procedures set forth  
9 in this section or section 22, for any rulemaking relating  
10 to consumer credit or debt, the Commission shall conduct  
11 such rulemaking in accordance with section 553 of title  
12 5, United States Code, and the provisions for judicial re-  
13 view of rules promulgated in accordance with such section  
14 shall apply to any rule promulgated in such a rule-  
15 making.”.

16       (b) SPECIFIC RULEMAKINGS.—

17               (1) DEBT SETTLEMENT.—

1           (A) IN GENERAL.—The Federal Trade  
2 Commission shall examine the practices of pro-  
3 viders of debt settlement services in order to de-  
4 termine the need to issue rules preventing un-  
5 fair or deceptive acts or practices of providers  
6 of such services. The Commission shall consider  
7 issuing rules that—

8           (i) prohibit or restrict the charging of  
9 fees to consumers prior to any debt settle-  
10 ment service being fully rendered and doc-  
11 umented to the consumer, and limit fees  
12 that may be charged after a settlement  
13 with a creditor is reached;

14           (ii) require disclosures before a debt  
15 settlement service contract is signed or  
16 agreement is reached regarding the fee  
17 structure, expected time frames for a suc-  
18 cessful settlement, success rate of debtors  
19 in settling their debts, information about  
20 creditor participation in settlement plans,  
21 the potential impact on a consumer's credit  
22 score, and any other material information;

23           (iii) prohibit misrepresentation of any  
24 material information in the advertising,

1 marketing, or sale of debt settlement serv-  
2 ices; and

3 (iv) require that debt settlement serv-  
4 ice providers maintain certain records to  
5 demonstrate compliance with the require-  
6 ments of any rules that the Commission  
7 issues pursuant to subparagraph (A).

8 (B) DEFINITION.—For purposes of sub-  
9 paragraph (A), the term “debt settlement serv-  
10 ice” means any product or service represented  
11 directly or indirectly, to renegotiate, settle, or in  
12 any way alter the terms of payment or other  
13 terms of the unsecured debt between a con-  
14 sumer and one or more unsecured creditors or  
15 other entities, including a reduction in the bal-  
16 ance, interest rate, or fees owed by a consumer  
17 to a creditor or other entity.

18 (2) MOTOR VEHICLE FINANCING.—The Federal  
19 Trade Commission shall examine the practices of  
20 motor vehicle dealers with respect to the financing  
21 services such dealers provide to consumers to pur-  
22 chase motor vehicles in order to determine the need  
23 to issue rules preventing unfair or deceptive acts or  
24 practices of such dealers. The Commission shall con-  
25 sider issuing rules that—

1 (A) prohibit or restrict unilateral changes  
2 in financing terms after the sale of the vehicle  
3 to the consumer;

4 (B) require that purchase agreements or  
5 sales contracts for used motor vehicles that are  
6 entered into between a consumer and a motor  
7 vehicle dealer include a provision which permits  
8 the consumer to cancel the transaction within a  
9 specified period following the sale or receipt of  
10 final information concerning the terms of the  
11 sale or financing; and

12 (C) establish limits on the compensation  
13 motor vehicle dealers may accept or solicit  
14 based on the interest rate, annual percentage  
15 rate, or the amount financed with respect to the  
16 sale of a motor vehicle that is either—

17 (i) for the provision, procurement, or  
18 arrangement of financing; or

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

21 (3) PAYDAY LENDING.—The Federal Trade  
22 Commission shall examine the practices of providers  
23 of payday lending services in order to determine the  
24 need to issuing rules preventing unfair or deceptive

1 acts or practices with respect to such services. The  
2 Commission shall consider issuing rules that—

3 (A) prohibit or restrict acts or practices in  
4 connection with the collection of or a default on  
5 a payday loan;

6 (B) prohibit or restrict consumer loans in  
7 which the creditor has access to a deposit, sav-  
8 ings, or other financial account maintained by  
9 the borrower as security for the obligation; and

10 (C) limit the ability of creditors to roll  
11 over, renew, repay, refinance, or consolidate any  
12 consumer credit extended to the creditor with  
13 the proceeds of other credit extended to the  
14 same covered member or a dependent.

15 (4) MORTGAGE FORECLOSURE RESCUE AND  
16 LOAN MODIFICATION SERVICES.—The Federal Trade  
17 Commission shall, in accordance with section 553 of  
18 title 5, United States Code, promulgate rules with  
19 issue to mortgage foreclosure rescue and loan modi-  
20 fication services. Such rules shall include—

21 (A) a requirement that any mortgage fore-  
22 closure rescue or loan modification service pro-  
23 vided to a homeowner related to the foreclosure  
24 of residential real property contain a written  
25 contract that contains clear and prominent dis-

1 closures regarding the nature of the contract  
2 and the total amount and terms of compensa-  
3 tion;

4 (B) a requirement that any contract re-  
5 ferred to in subparagraph (A) contain a clearly  
6 and prominently disclosed right for the home-  
7 owner to cancel within a set number of business  
8 days to be established by the Federal Trade  
9 Commission with no penalty or obligation;

10 (C) a requirement that prohibits or re-  
11 stricts mortgage foreclosure rescue and loan  
12 modification services from requesting or receiv-  
13 ing funds until any such services have been  
14 fully performed and results have been achieved  
15 and the services and results have been docu-  
16 mented to the consumer; and

17 (D) other prohibitions or restrictions on  
18 mortgage foreclosure rescue and loan modifica-  
19 tion services that are determined by the Com-  
20 mission to be unfair or deceptive acts or prac-  
21 tices.

22 (c) TREATMENT OF RULES.—Any rule issued by the  
23 Commission pursuant to this section shall be treated as  
24 a rule issued pursuant to subsection 18(a)(1)(B) of the  
25 Federal Trade Commission Act for purposes of enforce-

1 ment of violations and for purpose of section 18(f)(1) of  
2 that Act.

3 (d) DEADLINE FOR RULEMAKINGS.—Using the au-  
4 thority granted in subsection (a) the Commission shall  
5 commence the rulemakings determined to be necessary  
6 under paragraphs (1), (2) and (3) of subsection (b) within  
7 6 months after the date of enactment of this Act.

8 **SEC. 3. AUTHORITY TO OBTAIN CIVIL PENALTIES IN CON-**  
9 **NECTION WITH UNFAIR AND DECEPTIVE**  
10 **ACTS OR PRACTICES RELATING TO CON-**  
11 **SUMER CREDIT OR DEBT.**

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

14 (1) by redesignating subparagraph (C) as sub-  
15 paragraph (D), and in such subparagraph (as so re-  
16 designated), by striking “subparagraphs (A) and  
17 (B)” and inserting “subparagraphs (A), (B), and  
18 (C)”; and

19 (2) by inserting after subparagraph (B) the fol-  
20 lowing new subparagraph:

21 “(C) The Commission may commence a  
22 civil action to recover a civil penalty in a dis-  
23 trict court of the United States against any  
24 person, partnership, or corporation which en-  
25 gages in any unfair or deceptive acts or prac-

1           tices in connection with consumer credit or debt  
2           with actual knowledge or knowledge fairly im-  
3           plied on the basis of objective circumstances  
4           that such an act is unfair or deceptive. In such  
5           action, such person, partnership, or corporation  
6           shall be liable for a civil penalty as provided in  
7           subparagraph (A).”.

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

9           (a) IN GENERAL.—Except as provided in subsection  
10          (f), in any case in which the attorney general of a State  
11          has reason to believe that an interest of the residents of  
12          that State has been or is threatened or adversely affected  
13          by the engagement of any person in a practice that vio-  
14          lates any rule issued under section 2, the State, as *parens*  
15          *patriae*, may bring a civil action on behalf of the residents  
16          of the State in an appropriate district court of the United  
17          States or other court of competent jurisdiction to—

- 18               (1) enjoin that practice;
- 19               (2) enforce compliance with the rule;
- 20               (3) obtain damages, restitution, or other com-  
21          pensation on behalf of residents of the State;
- 22               (4) obtain penalties provided for under section  
23          5(m) of the Federal Trade Commission Act (15  
24          U.S.C. 45(m)); and

1           (5) obtain such other relief as the court may  
2 consider to be appropriate.

3           (b) NOTICE TO COMMISSION.—

4           (1) IN GENERAL.—A State shall provide written  
5 notice to the Commission regarding any civil action  
6 under subsection (a) at least 30 days before the date  
7 on which the State intends to initiate the civil action  
8 by filing a complaint.

9           (2) INITIATION OF ACTION.—A State may ini-  
10 tiate the civil action by filing a complaint—

11           (A) at any time after the date on which  
12 the 30-day period ends; or

13           (B) earlier than such date if the Commis-  
14 sion consents to an earlier initiation of the civil  
15 action by the State.

16           (3) FORM OF NOTICE.—The written notice re-  
17 quired by this paragraph may be provided by elec-  
18 tronic mail, facsimile machine, or any other means  
19 of communication accepted by the Commission.

20           (4) COPY OF COMPLAINT.—A State shall pro-  
21 vide a copy of the complaint to the Commission upon  
22 filing the complaint or as soon as possible thereafter.

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

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

3           (2) remove the action to the appropriate United  
4           States district court; and

5           (3) file petitions for appeal of a decision in such  
6           civil action.

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

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

20                (1) the venue shall be a judicial district in  
21                which the defendant or a related party is found, is  
22                an inhabitant, or transacts business, or wherever  
23                venue is proper under section 1391 of title 28,  
24                United States Code;

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 defendant  
5 or related party in 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 a State prevails  
17 in any civil action under subsection (a), the State can re-  
18 cover reasonable costs and attorney fees from the lender  
19 or related party.

Amend the title so as to read: “A bill to provide au-  
thority 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 motor vehicle financ-  
ing, and for other purposes.”.

