COMMERCE AND LABOR COMMITTEE

Thursday, February 6, 1975

The meeting was called to order in Room #213 at 1:15 p.m., on Thursday, February 6, 1975.

Senator Gene Echols was in the chair.

PRESENT: Senator Gene Echols
Senator Richard Blakemore
Senator Gary Sheerin
Seantor Richard Bryan
Senator William Raggio
Senator Warren Monroe
Senator Margie Foote

ALSO PRESENT:

Shirley Kaat, Washoe County District Attorney's Office
Joe Lawler, Consumer Affairs
Pete Kelley, Nevada Retail Association
Fran Breen, Nevada Banker's Association
Gino Del Carlo, First National Bank
Wally Warren
Debbie Driggs
Jay Baker
John Melvin
Mike Melner, State of Nevada, Department of Commerce
Larry Cardinalli
Bob Gagner
Skip King, Nevada Industrial Commission, Legal Department
John Reiser, Chairman, Nevada Industrial Commission
Teri Weaver
Peggy Murphy
Senator Mary Gojack
Joe Braswell

S.B. 27:

Introduction of Peggy Murphy was made by Senator Mary Gojack. Mrs. Murphy came to testify concerning a problem she had had with the Spiegel, who is a mail order company in Chicago. She described her problem as follows. She had order items from Spiegel. When the shipment came, it was wrong. But, she liked the part that was wrong and sent back the right part. When the order came in one set of drapes was missing. The company then started billing her, but she didn't want to pay them until she received the missing set of drapes. This went on for about six months. She went to to tell the action she had taken and the action that the company had taken. She was finally sent to a collection agency and they cancelled the account.

After Mrs. Murphy's testimony, Senator Sheerin asked whether S.B. 27 would help her problem. Mrs. Murphy replied that she didn't really know, but thought that it would. Senator Bryan also brought out this point. She was told that there was already legislation that allowed her to go to court and fight the company.

Senator Gojack brought out that each person was entitled to an individual investigation. She also thought it would be helpful if there was one person to personally handle credit problems at these companies.

Senator Sheering asked Mrs. Murphy if she had ever received an itemized statement from Spiegel. She replied that it was itemized in that it had amounts, but she did not know which items went with which amounts because the items purchased were not listed on the billing. She was informed by Senator Sheerin that if she never received an itemized billing from Spiegel, that Spiegel was in violation of the law. In another section it says that if you don't receive an itemized billing, the company cannot recover anything.

Senator Gojack brought out that if Spiegel was in violation of Nevada law, that these cases would be taken to court, but what would happen to their credit rating in the meantime. She also said that Spiegel should do business in conformance with Nevada law.

At this point, Mr. Fran Breen, Nevada Banker's Association, stood up from the audience to inform the Committee that there was federal legislation, Fair Credit Billing Act. He said that the problem of damaged credit ratings was covered in this legislation. He said that he would explain all of it to the Committee, but Senator Echols requested that he wait until all those in favor of the bill had spoken.

Mike Melner and Shirley Kaat came forward at this time to testify in favor of the bill.

Mike Melner, State of Nevada, Department of Commerce, testified that when his department had seen the legislation, they had done some looking at the records to see if they had had complaints along the lines of Mrs. Murphy's problem. He said that they didn't have these kind of problems with Nevada stores and banks. Generally, they know the people they deal with. He said that about two to three percent of their complaints are like Mrs. Murphy's. They generally find that these complaints stem from computer error. He also discussed the Fair Credit Reporting Act.

Shirley Kaat, Washoe County District Attorney's Office, testified at this time. She supported basically Mike Melner's remarks. She indicated they do not get too many problems like Mrs. Murphy's. When it does happen, they intervene and try to get personalized service for their customers. The Consumer Protection Agency did feel that there was a need for a name, address, department, etc., to be printed on the credit card. They also feel that the name of a particular person would be helpful, rather than just a department to complain to. They also said that in regard to S.B. 27, Section Three, which states:

> "If the designated department finds that the cardholder is correct, with respect to the disputed item, they shall, ..."

At this point, the Consumer Protection Division is interested in adding "within thirty days."

There was general discussion of Section Three of S.B. 27.

Senator Sheerin brought out that perhaps the bill should be changed to deal with out-of-state businesses. The reason for this being that there are not too many problems of this kind with Nevada Businesses.

There was discussion at this time whether the public was informed of the help that is available to them such as Consumer Affairs, etc. The Committee was informed that the Public Service Commission does help some with this problem.

At this time Mr. Fran Breen, Nevada Banker's Association, came forward to testify against S.B. 27. They are against the bill because they feel that it is adequately covered by federal legislation called the Fair Credit Billing Act, P.L. 93-395. Mr. Breen discussed this Act in detail. Copies are attached. This bill becomes effective in October, 1975. It is an amendment to the Truth and Lending Act. In effect, the federal bill does the same as S.B. 27, however, there are a few differences, which Mr. Breen pointed out.

Senator Sheerin asked Mr. Breen if the federal law specifically took care of Mrs. Murphy's problem. Mr. Breen replied that it did more than S.B. 27.

Senator Bryan asked Mr. Breen if the obligor would have to respond within a certain time. Mr. Breen replied that in the federal law the company must, within thirty days after receipt of the notice, send a written acknowledgement thereof to the obligor.

There was discussion of the federal bill between Mr. Breen, Senator Sheerin, and Senator Bryan.

Senator Gojack asked Mr. Breen exactly what was the meaning of itemized statement. Mr. Breen referred her to Section 161, Paragraph B, Section 2.

Mr. Breen also discussed relation of federal laws to state laws.

Joe Braswell told the committee about a similar problem he had with another company. He said that he had written a letter making a carbon to the Consumer Affairs Division, and the matter was promptly taken care of.

Joe Lawler, Consumer Affairs Division, brought out that regardless of federal laws pending October development, there should be some internal department that the consumer can turn to for help.

General discussion of the federal bill.

Senator Monroe motioned that the Committee hold the bill.
Senator Blakemore seconded the motion.
Motion carried.

Meeting adjourned at 2:15 p.m.

Respectfully Submitted,

Kristine Zohner
Secretary

APPROVED BY:

Gene Echols
Gene Echols, Chairman

Purpose of consumer report must be made clear 27

When FTC's interpretations were issued, a credit bureau wrote to ask whether it was justified in refusing to furnish a collection agency with a "consumer report"-- since the agency hadn't certified the purpose of the report. The refusal was upheld by FTC.

This advice has made FTC's attitude clear: When there's any doubt about their purpose, consumer reports are to be withheld until the doubt is resolved.

FAIR CREDIT BILLING

The Fair Credit Billing Act, effective October 27, 1975, spells out some further rights of consumers--and makes things somewhat tougher for creditors. Here's what it provides:

(1) A creditor must acknowledge any inquiry from a customer about a billing statement, within 30 days after receiving the inquiry. (The customer has 60 days to question his statement.) The creditor must correct the error within 2 billing cycles, but not later than 90 days after the inquiry--or send the customer an explanation of why he believes the statement is correct.

(2) A creditor can't take any action to collect on a debt-- or threaten to report the matter to a third party-- until the dispute is settled.

(3) On an open-end credit plan, the creditor must mail the billing statement at least 14 days before the date by which the customer has to pay to avoid a finance charge. He must also post customer payments promptly, to prevent any unnecessary finance charge from being imposed.

(4) A creditor can't prohibit merchants from offering discounts for payments in cash, or by check or other means. (Any discount up to 5%-- or a customer's failure to earn it-- is not treated as a finance charge, if it's offered publicly to all buyers.)

(5) A creditor (such as a bank) can't offset a customer's indebtedness under a credit card transaction with other funds the customer has deposited -- unless authorized by the customer to do this.

(6) A credit card issuer is subject to the same claims and "defenses" as a seller, provided that (a) the customer has tried in good faith to resolve the problem with the seller, (b) the amount involved is over $50, and (c) the transaction took place in the same state as the customer's mailing address-- or within 100 miles of it.

Exception: The customer isn't limited by (b) and (c) above, if there is a "close working arrangement" between the card issuer and the seller. All he has to show is a good faith effort on his part to solve the problem.

NATIONAL BANKAMERICARD
WASHINGTON NEWSLETTER

November 8, 1974

To: Class A Members
Senior BankAmericard Officer
Center Manager

THE 94TH CONGRESS

Although the 93rd Congress is not yet over -- they come back on November 18th for a "lame duck" session -- the make-up of the 94th has been determined following the election of November 5th. In the House of Representatives will be ninety-two new members with a lopsided Democratic majority that will change the composition of the House Banking Committee considerably. The present ratio on the Committee is 24 Democrats and 16 Republicans. The new House Rules require reapportionment of Committees to exactly reflect party membership in the House. Consequently, we can expect in January to have a Banking Committee composed of 27 Democrats and only 13 Republicans.

Election losers on the Committee include the ranking Republican member, Congressman William Widnall of New Jersey (after 24 years). Replacing him as ranking Republican will be Congressman Al Johnson of Pennsylvania. Also losing on the Republican side were Congressmen Ben Blackburn of Georgia, Larry Williams of Pennsylvania and Angelo Roncallo of New York. In addition, although none of the Democrats lost, Congressman Dick Hanna of California, Tom Gettys of South Carolina and Frank Brasco of New York have retired. This means seven new members (assuming no switching to other committees) in the 94th Congress.

Little change is expected in the Senate Committee on Banking, Housing and Urban Affairs, except that Senator Proxmire will in all likelihood become Chairman in January. Two of the Democrats were up this year for re-election, Senators Alan Cranston of California and Adlai Stevenson of Illinois. Both won handily. On the Republican side Senator Wallace Bennett of Utah is retiring and Senator Bob Packwood easily won re-election.

The 94th Congress will be a busy one for the Eastern Office of NBI. There is every reason to expect significant new omnibus legislation from both Mrs. Sullivan and Senator Proxmire. In addition, it is likely that legislation will be considered prohibiting age discrimination in the granting of credit. None of this, of course, takes into consideration anything that the new members (who for the most part are younger, more liberal, more dedicated to change, more interested in fast solutions to the problems that they see) might have in store for us.

EFFECTIVE DATES ON FAIR CREDIT BILLING AND ECOA

President Ford signed H.R. 11221 into law on October 28th and it is now Public Law 93-495. The effective dates of those Titles of interest to our members in conducting their business are as follows:

Title III Fair Credit Billing: one year from enactment

Title IV Truth in Lending Amendments: effective immediately, except that Sections 409 (Full Statement of Closing Costs) and 411 (Identification of Transactions) take effect one year following enactment. In addition, Sections 406 (Good Faith Compliance), 407 (Liability for Multiple Disclosures) and 408 (Civil Liability) are applicable retroactively in actions pending under Chapters 2 or 4 of the Truth in Lending Act, unless prior to the date of enactment the case has been determined by final judgment of a court of competent jurisdiction and no further review of such judgment may be had by appeal or otherwise.

Title V Equal Credit Opportunity: one year from enactment.

In the coming weeks the Federal Reserve Board will be drafting proposed regulations on these titles. NBI, with its expertise and the research facilities at its disposal, will be assisting with this task.

AGE DISCRIMINATION MEASURE INTRODUCED

Shortly before the October Congressional recess, Congressman Bill Widnall (R-NJ) introduced a bill to prohibit discrimination on the basis of age in the granting of credit.

The measure, H.R. 17350, is designed to add age as a prohibited category to Title VII of the Consumer Credit Protection Act. Title VII was recently amended by the Equal Credit Opportunity Act (Title V of Public Law 93-495; see Special Supplement, Washington Newsletter, October 25, 1974) to prohibit discrimination based on sex or marital status.

H.R. 17350 permits inquiry of age, limits protection to those applicants with the capacity to contract, and permits the use of statistically valid tests and actuarial criteria but prohibits the use of arbitrary age limits (see also H.R. 12713, introduced by Congressman Hugh Carey [Governor-elect of New York], Washington Newsletter, February 15, 1974).

KNAUER CALLS FOR STRONGER LEGISLATION

Virginia H. Knauer, Special Assistant to the President for Consumer Affairs, has called on Congress to reconsider amendments to the Fair Credit Reporting Act. Speaking before the 50th Annual Conference of the American Petroleum Credit Association on October 22nd in Atlanta, Mrs. Knauer said that the present law gave consumers inadequate protection. Mrs. Knauer stated that consumers should be entitled to a specific explanation from the creditor when credit is denied and be permitted to see their actual credit report file rather than depend on verbal disclosure by credit bureau personnel.

Amendments to strengthen the Fair Credit Reporting Act were introduced by Senator William Proxmire (D-Wis) last year (S. 2360; see Washington Newsletter, September 14, 1973) and subsequently set aside (tabled) by the Senate Banking Committee over his objections. When Senator Proxmire assumes the chairmanship of the Banking Committee in January, FCRA amendments will undoubtedly become priority legislation.

PROFILE: HARRISON ARLINGTON WILLIAMS, JR.

Democrat "Pete" Williams, a third-term Senator from New Jersey, was born on December 10, 1919, in Plainfield, Union County, New Jersey. He attended the public schools of Union County and graduated in 1941 from Oberlin (Ohio) College. Mr. Williams then moved to the District of Columbia where he was engaged in newspaper work while attending the Georgetown University Foreign Service School. On December 17, 1941, he was called to active duty as a member of the United States Naval Reserve. He served on a minesweeper as a seaman; attended OCS training where he became a pilot; was a naval aviation instructor; and was discharged as a Lieutenant (jg) in December of 1945. After his stint with the U. S. Navy, Senator Williams returned to Ohio where he was employed for a short period of time as a laborer in a steel mill. It was here that he gained his firsthand knowledge of unions and labor problems. He is presently a member of the United Steel Workers Association. The Senator received his LLB from Columbia University Law School in 1948 and commenced practice in New Hampshire in that same year. He returned to Plainfield, New Jersey to continue in the practice of law in 1949.

New Jersey, the 8th most populous state in the nation, is a state without an identity. Sandwiched between New York City and Philadelphia, Jerseyites read out-of-state newspapers, watch out-of-state television stations, and follow out-of-state political contests. Although the residents of the state are among the nation's best educated and most affluent, there is only meager participation in local politics.

Senator Williams unsuccessfully campaigned for a seat in the New Jersey House of Assembly in 1951 and unsuccessfully for City Councilman in 1952. He was a delegate to the Democratic National Conventions in 1960, 1964, and 1968. From 1953 to 1957, Williams was a Member of the United States House of Representatives, but he was defeated in this third bid for that Congressional slot in the election of 1956. "Pete" Williams has been a Member of the United States Senate since January 3, 1959.

As a Member of the Senate, he serves as a senior member (3rd ranking) of the Senate Committee on Banking, Housing and Urban Affairs and on its Subcommittees on Securities (Chairman); Housing and Urban Affairs and Financial Institutions. The Senator is Chairman of the Labor and Public Welfare Committee where he is also Chairman of the Subcommittee on Labor. In addition, he serves on the Senate Rules Committee, Senate Steering Committee, Joint Committees on the Library and on Defense Production. He also is a ranking majority member and former Chairman of the Senate Special Committee on Aging.

The Commission has been appropriated two million dollars and authorized to appoint an Executive Director and additional staff personnel as deemed necessary.

TITLE III - FAIR CREDIT BILLING

The Fair Credit Billing Act adds a new Chapter 4 to the Truth-in-Lending Act. The Fair Credit Billing provisions require generally that creditors resolve billing errors in a prescribed manner and within a specified time period or otherwise forfeit the amount claimed to be in error subject to a maximum forfeiture of $50. In order to obtain these new billing rights, the consumer must: (1) make written notification of an alleged error within sixty days after receiving the bill; (2) make such notification separate from the return payment stub if the creditor so requires; (3) send the notice to the required address as disclosed on the creditor's periodic statement; (4) enable the creditor to identify the consumer's name and account number (if any); (5) indicate the amount of the billing error; and (6) identify why he believes the bill contains an error.

If the consumer fulfills these requirements, the creditors must: (1) acknowledge the notification within thirty days unless the error is resolved within that period; (2) refrain from collecting the disputed amount until the error is resolved except that a creditor may continue to bill a disputed amount provided he indicates the consumer does not have to pay such amount until the error is resolved; and (3) resolve the error within two complete billing cycles after receiving the consumer's notice (not to exceed ninety days). An error is resolved by (a) correcting the bill by the amount claimed to be in error by the consumer; (b) correcting the bill by a different amount with an explanation of the change and providing documentary evidence if requested; or (c) explaining or clarifying why the original bill was correct after investigating and providing documentary evidence if requested. (Simple form letters will be inadequate for compliance.)

A billing error is defined as any of the following: (1) an extension of credit not made, or made in a different amount; (2) an extension of credit for which the consumer requests additional clarification including documentary evidence thereof; (3) a bill for undelivered or unaccepted goods or services when delayed delivery was not agreed to by the consumer; (4) failure to reflect payments or credits; (5) a computation or similar error; or (6) any other error prescribed in the Federal Reserve Board's regulations.

The Act sets forth the credit reporting responsibilities of a creditor who receives notification of a billing error. While the creditor is investigating a billing inquiry, he is prohibited from reporting to a credit bureau that the amount in dispute is delinquent. He also is barred from taking action to collect the amount in dispute including threatening the consumer with an adverse credit report.

If a consumer still disputes the accuracy of a bill after it has been explained to him in the manner set forth above, the creditor can begin normal collection activity; however, if he reports the amount as delinquent to a credit bureau, he must indicate the amount that is in dispute and must notify the consumer that the amount was reported as delinquent and must give the consumer the name and address

of the credit bureau involved. The creditor must also report any subsequent resolution of any delinquencies reported. Creditors who violate this provision also forfeit the right to collect the amount in dispute up to $50.

In addition to the above procedures concerning billing errors, the act contains a number of other relevant provisions as follows:

- A creditor may not impose a finance charge on an open-end credit account unless the billing statement is mailed at least fourteen days prior to the due date, unless the delay is based on or results from justifiable excuse or cause as determined by the Fed.
- Creditors must promptly post payments received as specified by Fed regulations.
- Creditors must promptly credit excess payments in an open-end credit account or refund the excess if requested by the consumer.
- Merchants are required to promptly notify third-party card issuers of any return of goods or forgiveness of debt for services which were the subject of a credit card sale.
- Credit card issuers and merchants may not contract to prohibit cash discounts. Any cash discount of 5% or less is exempted from the Truth-in-Lending disclosure requirements if its availability is disclosed to all prospective buyers clearly and conspicuously in accordance with Board regulations.
- Credit card issuers may not require merchants to open deposit accounts or purchase other services as a condition for participating in a credit card plan.
- Card issuers may not offset a cardholder's debt against funds maintained on deposit with the issuer unless (1) such action was previously authorized in writing by the cardholder pursuant to a credit plan whereby the cardholder periodically agrees to pay indebtedness by permitting the card issuer periodically to deduct all or a portion of such debt from the cardholder's deposit account and (2) the cardholder is given an opportunity to rescind any such deduction with respect to any disputed item.

Credit card issuers will be subject to all claims (other than tort) or defenses arising out of any credit card transaction provided (1) the cardholder made a good faith attempt to obtain satisfaction from the merchant honoring the card; (2) the transaction exceeded $50; and (3) the transaction occurred in the same state as the cardholder's residence or within a 100 mile radius of the cardholder's residence, whichever is greater. The claim or defense is limited to the amount of credit outstanding at the time the card issuer or merchant is first notified of the claim or defense. The geographic and dollar amount restrictions on a cardholder's ability to assert claims or defenses against a card issuer do not apply when the card issuer and seller are the same person or are closely affiliated as described specifically in the Act.

A creditor must comply with state laws on billing practices unless the state law is inconsistent with this Act and compliance is excused only to the extent of the inconsistencies. The Fed may not construe as inconsistent any state provision that gives greater protection to the consumer. The Fed is also directed to exempt any state from federal law if it enacts a substantially similar law or one that gives greater protection to the consumer, provided that there is adequate provision for enforcement.

Creditors are required to notify consumers of their rights concerning billing error procedures, credit reports, and the waiver of defenses provision at least twice a year. An address for receiving billing inquiries must be disclosed along with monthly billing statements.

In addition to the potential $50 forfeiture, creditor liability for violations of the foregoing provisions is the same as that for a violation of Truth-in-Lending as discussed below.

TITLE IV - AMENDMENTS TO THE TRUTH-IN-LENDING ACT

This Title contains a number of amendments to improve the administration of the Truth-in-Lending Act. The following provisions affect the bank card industry:

A creditor is relieved of civil liability for good faith compliance with any rule, regulation or interpretation of the Board regardless of whether the latter has been amended, rescinded or determined judicially to be invalid.

Multiple failures to make a Truth-in-Lending (Chapter 1) disclosure to any person entitles that person to a single recovery, but continued failure to disclose after a recovery has been granted gives rise to rights to additional recoveries.

Liability is limited in the case of a class action for a violation of Chapters 1 or 4 (Truth-in-Lending or Fair Credit Billing) to the lesser of $100,000 or 1% of the net worth of the creditor. Although the $100 minimum recovery still applies in individual actions, it is not applicable to class actions. The Act further provides that in determining the amount of award in a class action, the court shall consider the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected and the extent to which the creditor's failure was intentional.

The liability limit on damages and for multiple violations, as well as the immunities granted for good-faith compliance, are applicable to violations occurring prior to enactment, provided the creditor's liability has not been finally determined by a court prior to such date.

The existing law prohibiting the sending or issuance of unsolicited credit cards, limiting cardholder liability for lost or stolen cards, or fraudulent use of credit cards, has been made applicable to business cards. However, a card issuer and a business providing credit cards issued by the card issuer to ten or more of its

employees may contract as to the liability of the business without regard to the terms of the Truth-in-Lending Act, provided that the terms of the agreement do not impose liability upon any employee of the business in excess of that allowed by the statute.

Open-end creditors must include on their monthly billing statements a brief identification of each transaction sufficient to enable the consumer to identify the transaction or relate it to copies of sales vouchers previously furnished. Such identification need not be repeated in subsequent billing statements on balances which have been carried over.

Open-end creditors may indicate that payment by a certain day must be made to avoid a finance charge without disclosing that no finance charge will actually be imposed if the payment is received after such date but before the opening of the next billing period.

The criminal penalties for credit card fraud, namely, a $10,000 fine or ten year prison term, are extended to the following acts: (1) obtaining or attempting or conspiring to obtain with a fraudulent credit card, in a transaction affecting interstate commerce, anything with a value aggregating $1,000 or more in one year; (2) transporting or attempting or conspiring to transport fraudulent credit cards in interstate or foreign commerce; (3) using any instrumentality of interstate or foreign commerce to sell or transport a fraudulent credit card; (4) receiving, concealing, using or transporting anything (except transportation tickets) obtained through a fraudulent credit card and having a value aggregating $1,000 or more within any one year, which moved in, is part of, or which constitutes interstate or foreign commerce; (5) receiving, concealing, using, selling or transporting in interstate or foreign commerce transportation tickets for interstate or foreign commerce aggregating $500 or more in any one year, which have been obtained through a fraudulent credit card; or (6) furnishing anything in a transaction affecting interstate or foreign commerce with an aggregate value of $1,000 or more in any one year when obtained through a fraudulent credit card.

These provisions of Title IV take effect immediately upon enactment, except the provision related to descriptive billing which takes effect one year after enactment.

TITLE V - EQUAL CREDIT OPPORTUNITY

The Equal Credit Opportunity Act adds a new Title to the Consumer Credit Protection Act. The new Title VII provides generally that it shall be unlawful for any creditor to discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction. However, creditors may safely inquire about marital status for the purposes of ascertaining applicable rights and remedies.

The Act also accommodates various problems arising from the relation of federal to state laws. In particular: (1) a creditor may request the signature of both parties to a marriage for purposes of creating a valid lien, passing clear title, waiving property rights or assigning earnings; (2) a creditor may consider and apply state laws that directly or indirectly affect creditworthiness. (This is particularly applicable in those community property states that limit the rights

of a married woman to pledge assets.); (3) the Act permits preemption of state laws that prohibit the separate extension of credit to each party to a marriage, provided that each party voluntarily applies for separate credit from the same creditor and each party assumes sole responsibility for that debt; (4) the Act provides that a creditor need not aggregate accounts that are issued separately to each party to a marriage for purposes of determining permissible finance charges or loan ceilings under state law; (5) the Act provides that, prior to litigation, applicants must elect between federal or state remedies in the case of alleged discrimination.

Creditors are subject to administrative procedures in an enforcement scheme parallel to that in the Truth-in-Lending Act. In addition, failure to comply with the requirements of the Act may result in liability for unlimited actual damages in individual or class actions, punitive damages up to $10,000 in the case of an individual action; and punitive damages up to the lesser of $100,000 or 1% of the net worth of a creditor in the case of a class action. The Act enumerates various factors to be considered by the Court in determining the amount of the award. Attorneys' fees are payable if the plaintiff prevails. Actions must be commenced within one year of the date of occurrence of the alleged violation.

A creditor is relieved of civil liability for good faith compliance with any rule, regulation or interpretation by the Federal Reserve Board. The Fed is authorized to propose those regulations which are necessary or proper to effectuate this Title, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith. The regulatory authority was extended beyond that of the Truth-in-Lending Act to include the word, "substantiate" in order to permit the Fed to enforce a record keeping requirement. Although the Act is not effective for one year, the Fed must propose for comment and promulgate rules prior to the effective date.

ices, with or without reimbursement, as the Commission may request to assist it in carrying out its functions.

AUTHORIZATION OF APPROPRIATIONS

Sec. 208. There are authorized to be appropriated without fiscal year limitations such sums, not to exceed $2,000,000, as may be necessary to carry out the provisions of this title.

TITLE III—FAIR CREDIT BILLING

§ 301. Short title

This title may be cited as the "Fair Credit Billing Act".

§ 302. Declaration of purpose

The last sentence of section 102 of the Truth in Lending Act (15 U.S.C. 1601)[36] is amended by striking out the period and inserting in lieu thereof a comma and the following: "and to protect the consumer against inaccurate and unfair credit billing and credit card practices."

§ 303. Definitions of creditor and open end credit plan

The first sentence of section 103(f) of the Truth in Lending Act (15 U.S.C. 1602(f))[37] is amended to read as follows: "The term 'creditor' refers only to creditors who regularly extend, or arrange for the extension of, credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, whether in connection with loans, sales of property or services, or otherwise. For the purposes of the requirements imposed under Chapter 4 and sections 127(a)(6), 127(a)(7), 127(a)(8), 127(b)(1), 127(b)(2), 127(b)(3), 127(b)(9), and 127(b)(11) of Chapter 2 of this Title, the term 'creditor' shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the Board shall, by regulation, apply these requirements to such card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open end credit plans.

§ 304. Disclosure of fair credit billing rights

(a) Section 127(a) of the Truth in Lending Act (15 U.S.C. 1637(a))[38] is amended by adding at the end thereof a new paragraph as follows:

"(8) A statement, in a form prescribed by regulations of the Board of the protection provided by sections 161 and 170 to an obligor and the creditor's responsibilities under sections 162 and 170. With respect to each of two billing cycles per year, at semiannual intervals, the creditor shall transmit such statement to each obligor to whom the creditor is required to transmit a statement pursuant to section 127(b) for such billing cycle."

36. 15 U.S.C.A. § 1601.
37. 15 U.S.C.A. § 1602(f).
38. 15 U.S.C.A. § 1637(a).

(b) Section 127(c) of such Act (15 U.S.C. 1637(c))[39] is amended to read:

"(c) In the case of any existing account under an open end consumer credit plan having an outstanding balance of more than $1 at or after the close of the creditor's first full billing cycle under the plan after the effective date of subsection (a) or any amendments thereto, the items described in subsection (a), to the extent applicable and not previously disclosed, shall be disclosed in a notice mailed or delivered to the obligor not later than the time of mailing the next statement required by subsection (b)."

§ 305. Disclosure of billing contact

Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b))[40] is amended by adding at the end thereof a new paragraph as follows:

"(11) The address to be used by the creditor for the purpose of receiving billing inquiries from the obligor."

§ 306. Billing practices

The Truth in Lending Act (15 U.S.C. 1601–1665)[41] is amended by adding at the end thereof a new chapter as follows:

"Chapter 4—CREDIT BILLING

"Sec.
"161. Correction of billing errors.
"162. Regulation of credit reports.
"163. Length of billing period.
"164. Prompt crediting of payments.
"165. Crediting excess payments.
"166. Prompt notification of returns.
"167. Use of cash discounts.
"168. Prohibition of tie-in services.
"169. Prohibition of offsets.
"170. Rights of credit card customers.
"171. Relation to State laws.

"§ 161. Correction of billing errors

"(a) If a creditor, within sixty days after having transmitted to an obligor a statement of the obligor's account in connection with an extension of consumer credit, receives at the address disclosed under section 127(b)(11) a written notice (other than notice on a payment stub or other payment medium supplied by the creditor if the creditor so stipulates with the disclosure required under section 127(a)(8)) from the obligor in which the obligor—

"(1) sets forth or otherwise enables the creditor to identify the name and account number (if any) of the obligor,

"(2) indicates the obligor's belief that the statement contains a billing error and the amount of such billing error, and

"(3) sets forth the reasons for the obligor's belief (to the extent applicable) that the statement contains a billing error,

the creditor shall, unless the obligor has, after giving such written

39. 15 U.S.C.A. § 1637(c).
40. 15 U.S.C.A. § 1637(b).
41. 15 U.S.C.A. § 1601 et seq.

notice and before the expiration of the time limits herein specified, agreed that the statement was correct—

"(A) not later than thirty days after the receipt of the notice, send a written acknowledgement thereof to the obligor, unless the action required in subparagraph (B) is taken within such thirty-day period, and

"(B) not later than two complete billing cycles of the creditor (in no event later than ninety days) after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the obligor under paragraph (2) either—

"(i) make appropriate corrections in the account of the obligor, including the crediting of any finance charges on amounts erroneously billed, and transmit to the obligor a notification of such corrections and the creditor's explanation of any change in the amount indicated by the obligor under paragraph (2) and, if any such change is made and the obligor so requests, copies of documentary evidence of the obligor's indebtedness; or

"(ii) send a written explanation or clarification to the obligor, after having conducted an investigation, setting forth to the extent applicable the reasons why the creditor believes the account of the obligor was correctly shown in the statement and, upon request of the obligor, provide copies of documentary evidence of the obligor's indebtedness. In the case of a billing error where the obligor alleges that the creditor's billing statement reflects goods not delivered to the obligor or his designee in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless he determines that such goods were actually delivered, mailed, or otherwise sent to the obligor and provides the obligor with a statement of such determination.

After complying with the provisions of this subsection with respect to an alleged billing error, a creditor has no further responsibility under this section if the obligor continues to make substantially the same allegation with respect to such error.

"(b) For the purpose of this section, a 'billing error' consists of any of the following:

"(1) A reflection on a statement of an extension of credit which was not made to the obligor or, if made, was not in the amount reflected on such statement.

"(2) A reflection on a statement of an extension of credit for which the obligor requests additional clarification including documentary evidence thereof.

"(3) A reflection on a statement of goods or services not accepted by the obligor or his designee or not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction.

"(4) The creditor's failure to reflect properly on a statement a payment made by the obligor or a credit issued to the obligor.

"(5) A computation error or similar error of an accounting nature of the creditor on a statement.

"(6) Any other error described in regulations of the Board.

"(c) For the purposes of this section, 'action to collect the amount, or any part thereof, indicated by an obligor under paragraph (2) does not include the sending of statements of account to the obligor following written notice from the obligor as specified under subsection (a), if—

"(1) the obligor's account is not restricted or closed because of the failure of the obligor to pay the amount indicated under paragraph (2) of subsection (a), and

"(2) the creditor indicates the payment of such amount is not required pending the creditor's compliance with this section.

Nothing in this section shall be construed to prohibit any action by a creditor to collect any amount which has not been indicated by the obligor to contain a billing error.

"(d) Pursuant to regulations of the Board, a creditor operating an open end consumer credit plan may not, prior to the sending of the written explanation or clarification required under paragraph (B)(ii), restrict or close an account with respect to which the obligor has indicated pursuant to subsection (a) that he believes such account to contain a billing error solely because of the obligor's failure to pay the amount indicated to be in error. Nothing in this subsection shall be deemed to prohibit a creditor from applying against the credit limit on the obligor's account the amount indicated to be in error.

"(e) Any creditor who fails to comply with the requirements of this section or section 162 forfeits any right to collect from the obligor the amount indicated by the obligor under paragraph (2) of subsection (a) of this section, and any finance charges thereon, except that the amount required to be forfeited under this subsection may not exceed $50.

"§ 162. Regulation of credit reports

"(a) After receiving a notice from an obligor as provided in section 161(a), a creditor or his agent may not directly or indirectly threaten to report to any person adversely on the obligor's credit rating or credit standing because of the obligor's failure to pay the amount indicated by the obligor under section 161(a)(2), and such amount may not be reported as delinquent to any third party until the creditor has met the requirements of section 161 and has allowed the obligor the same number of days (not less than ten) thereafter to make payment as is provided under the credit agreement with the obligor for the payment of undisputed amounts.

"(b) If a creditor receives a further written notice from an obligor that an amount is still in dispute within the time allowed for payment under subsection (a) of this section, a creditor may not report to any third party that the amount of the obligor is delinquent because the obligor has failed to pay an amount which he has indicated under section 161(a)(2), unless the creditor also reports that the amount is in dispute and, at the same time, notifies the

obligor of the name and address of each party to whom the creditor is reporting information concerning the delinquency.

"(c) A creditor shall report any subsequent resolution of any delinquencies reported pursuant to subsection (b) to the parties to whom such delinquencies were initially reported.

"§ 163. Length of billing period

"(a) If an open end consumer credit plan provides a time period within which an obligor may repay any portion of the credit extended without incurring an additional finance charge, such additional finance charge may not be imposed with respect to such portion of the credit extended for the billing cycle of which such period is a part unless a statement which includes the amount upon which the finance charge for that period is based was mailed at least fourteen days prior to the date specified in the statement by which payment must be made in order to avoid imposition of that finance charge.

"(b) Subsection (a) does not apply in any case where a creditor has been prevented, delayed, or hindered in making timely mailing or delivery of such periodic statement within the time period specified in such subsection because of an act of God, war, natural disaster, strike, or other excusable or justifiable cause, as determined under regulations of the Board.

"§ 164. Prompt crediting of payments

"Payments received from an obligor under an open end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Board. Such regulations shall prevent a finance charge from being imposed on any obligor if the creditor has received the obligor's payment in readily identifiable form in the amount, manner, location, and time indicated by the creditor to avoid the imposition thereof.

"§ 165. Crediting excess payments

"Whenever an obligor transmits funds to a creditor in excess of the total balance due on an open end consumer credit account, the creditor shall promptly (1) upon request of the obligor refund the amount of the overpayment, or (2) credit such amount to the obligor's account.

"§ 166. Prompt notification of returns

"With respect to any sales transaction where a credit card has been used to obtain credit, where the seller is a person other than the card issuer, and where the seller accepts or allows a return of the goods or forgiveness of a debit for services which were the subject of such sale, the seller shall promptly transmit to the credit card issuer, a credit statement with respect thereto and the credit card issuer shall credit the account of the obligor for the amount of the transaction.

"§ 167. Use of cash discounts

"(a) With respect to credit card which may be used for extensions of credit in sales transactions in which the seller is a person other

than the card issuer, the card issuer may not, by contract or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder to pay by cash, check, or similar means rather than use a credit card.

"(b) With respect to any sales transaction, any discount not in excess of 5 per centum offered by the seller for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card shall not constitute a finance charge as determined under section 106, if such discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously in accordance with regulations of the Board.

"§ 168. Prohibition of tie-in services

"Notwithstanding any agreement to the contrary, a card issuer may not require a seller, as a condition to participating in a credit card plan, to open an account with or procure any other service from the card issuer or its subsidiary or agent.

"§ 169. Prohibition of offsets

"(a) A card issuer may not take any action to offset a cardholder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer unless—

"(1) such action was previously authorized in writing by the cardholder in accordance with a credit plan whereby the cardholder agrees periodically to pay debts incurred in his open end credit account by permitting the card issuer periodically to deduct all or a portion of such debt from the cardholder's deposit account, and

"(2) such action with respect to any outstanding disputed amount not be taken by the card issuer upon request of the cardholder.

In the case of any credit card account in existence on the effective date of this section, the previous written authorization referred to in clause (1) shall not be required until the date (after such effective date) when such account is renewed, but in no case later than one year after such effective date. Such written authorization shall be deemed to exist if the card issuer has previously notified the cardholder that the use of his credit card account will subject any funds which the card issuer holds in deposit accounts of such cardholder to offset against any amounts due and payable on his credit card account which have not been paid in accordance with the terms of the agreement between the card issuer and the cardholder.

"(b) This section does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally.

"§ 170. Rights of credit card customers

"(a) Subject to the limitation contained in subsection (b), a card issuer who has issued a credit card to a cardholder pursuant to an open end consumer credit plan shall be subject to all claims (other

than tort claims) and defenses arising out of any transaction in which the credit card is used as a method of payment or extension of credit if (1) the obligor has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the credit card; (2) the amount of the initial transaction exceeds $50; and (3) the place where the initial transaction occurred was in the same State as the mailing address previously provided by the cardholder or was within 100 miles from such address, except that the limitations set forth in clauses (2) and (3) with respect to an obligor's right to assert claims and defenses against a card issuer shall not be applicable to any transaction in which the person honoring the credit card (A) is the same person as the card issuer, (B) is controlled by the card issuer, (C) is under direct or indirect common control with the card issuer, (D) is a franchised dealer in the card issuer's products or services, or (E) has obtained the order for such transaction through a mail solicitation made by or participated in by the card issuer in which the cardholder is solicited to enter into such transaction by using the credit card issued by the card issuer.

"(b) The amount of claims or defenses asserted by the cardholder may not exceed the amount of credit outstanding with respect to such transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of such claim or defense. For the purpose of determining the amount of credit outstanding in the preceding sentence, payments and credits to the cardholder's account are deemed to have been applied, in the order indicated, to the payment of: (1) late charges in the order of their entry to the account; (2) finance charges in order of their entry to the account; and (3) debits to the account other than those set forth above, in the order in which each debit entry to the account was made.

"§ 171. Relation to State laws

"(a) This chapter does not annul, alter, or affect, or exempt any person subject to the provisions of this chapter from complying with, the laws of any State with respect to credit billing practices, except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this chapter if the Board determines that such law gives greater protection to the consumer.

"(b) The Board shall by regulation exempt from the requirements of this chapter any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement."

§ 307. Conforming amendments

(a) The table of chapters of the Truth in Lending Act is amended by adding immediately under item 3 the following:

"4. Credit Billing ..... 161"

(b) Section 111(d) of such Act (15 U.S.C. 1610(d))[42] is amended by striking out "and 130" and inserting in lieu thereof a comma and the following: "130, and 166".

(c) Section 121(a) of such Act (15 U.S.C. 1631(a))[43] is amended—

(1) by striking out "and upon whom a finance charge is or may be imposed"; and

(2) by inserting "or chapter 4" immediately after "this chapter".

(d) Section 121(b) of such Act (15 U.S.C. 1631(b))[44] is amended by inserting "or chapter 4" immediately after "this chapter".

(e) Section 122(a) of such Act (15 U.S.C. 1632(a))[45] is amended by inserting "or chapter 4" immediately after "this chapter".

(f) Section 122(b) of such Act (15 U.S.C. 1632(b)) [46] is amended by inserting "or chapter 4" immediately after "this chapter".

§ 308. Effective date

This title takes effect upon the expiration of one year after the date of its enactment.

TITLE IV—AMENDMENTS TO THE TRUTH IN LENDING ACT

§ 401. Advertising; more-than-four-installment rule

(a) Chapter 3 of the Truth in Lending Act (15 U.S.C. 1661–1665) [47] is amended by adding at the end thereof a new section as follows:

"§ 146. More-than-four-installment rule

"Any advertisement to aid, promote, or assist directly or indirectly the extension of consumer credit repayable in more than four installments shall, unless a finance charge is imposed, clearly and conspicuously state, in accordance with the regulations of the Board:

"'THE COST OF CREDIT IS INCLUDED IN THE PRICE QUOTED FOR THE GOODS AND SERVICES.'"

(b) The table of sections of such chapter is amended by adding at the end thereof a new item as follows:

"146. More-than-four-installment rule.".

§ 402 Agricultural credit exemption

Section 104 of the Truth in Lending Act (15 U.S.C. 1603) [48] is amended by adding at the end thereof a new paragraph as follows:

"(5) Credit transactions primarily for agricultural purposes in which the total amount to be financed exceeds $25,000."

42. 15 U.S.C.A. § 1610(d).
43. 15 U.S.C.A. § 1631(a).
44. 15 U.S.C.A. § 1631(b).
45. 15 U.S.C.A. § 1632(a).
46. 15 U.S.C.A. § 1632(b).
47. 15 U.S.C.A. § 1661 et seq.
48. 15 U.S.C.A. § 1603.