HR - 13

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

MEMO

June 27, 1975

SUBJECT: Consumer Transactions Act - House Bill 170 Printer's No. 1732

TO: Honorable C. L. Schmitt, Chairman
Consumer Protection Committee

FROM: Louis B. Kozloff
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General Purpose of the "Consumer Transactions Act"

The bill was introduced to alter certain long standing rules of law that may have been good and necessary at the time of their enactment, but in today's modern economy only serve as an impediment to the furtherance of sound and fair business practices. The legal concepts known as confession of judgment, holder in due course, disclaimer of warranties, overbroad security interests, and acceleration of loan payments have been taken advantage of by unscrupulous merchants and, in many cases have become instruments of oppression.

In today's market place the original concept of freedom of contract and that the best law is the law the parties made in their own bargain works only if there is equality of knowledge, equality of ability to understand and equality of opportunity to go elsewhere. Because the consumer is not in an equal bargaining position in many circumstances many states have already eliminated the concepts mentioned above. The Federal Trade Commission has released some proposed rule changes and has stated the reasons for these suggested changes in terms that accurately fit the purposes for which House Bill 170 was introduced.

"The Commission has reason to believe that many creditors utilize form contracts in consumer credit transactions which constitute or contain a "confession of judgment, a waiver of statutory property exceptions, a wage assignment, a provision creating blanket security interests, a requirement that the consumer reimburse the creditor for attorney fees when the contract is referred to an attorney, and provisions imposing late charges and

extension fees; that these provisions are included in form contracts without regard to the actual risk of non-repayment borne by the creditor in a given case; that these remedies injure consumers; and that consumers receive no substantial benefit in exchange for the above-listed creditor remedies." (Underlinings added.)

The commission determined that it has reason to believe the above assertions after it was presented with information compiled by the staff during a two-year investigation of the character and use of collection remedies associated with consumer credit agreements throughout the United States.

It should be noted that, although these proposed rules theoretically overlap this piece of legislation in a few respects, there are several essential facts that must be borne in mind should the temptation arise to defer to the FTC. First, the record of the FTC in promulgating such rules is spotty. Many such provisions beneficial to the average wage-earner have been put forth within the last several years - none have been adopted. Second, if the FTC rules are adopted, the average decay to be expected may mount to two years or more. Finally, if the rules are promulgated, they will serve only to enable the Commission or the Attorney General of the United States to take action against flagrant and repeated violations by creditors throughout the country. No individual who is injured by such violations may do anything at all to obtain redress or halt illegal activities. Obviously, the citizens of Pennsylvania need something better, and, most importantly, something now.

Technical Aspects of The Bill

Section 1 - Short Title - "Consumer Transactions Act" (p8) line 21

Section 2 - Scope - Definitions - The bill relates to and affects all consumer transactions involving the selling or leasing of consumer goods and consumer services.

"Consumer (p8) line 26. Would be defined to mean an individual buying, borrowing or leasing goods or services which are used primarily for personal, family or household use.

"Consumer goods" (p8) line 29. Are defined to mean goods used, leased or bought for use primarily for personal, family or household purposes acquired whether by cash or credit.

"Consumer Services" (p9) line 2. Would include work, labor or services furnished for personal, family or household purposes. Services would also include services furnished in connection with the sale or repair of goods, repair or servicing of motor vehicles or the installation or application of goods in the modernization, rehabilitation, repair, alteration, improvement or reconstruction of real property. The act would apply whether or not the improvement or reconstruction of the property constitutes an improvement to the realty or just the addition of a fixture.

"Default" (p9) line 10. Despite any other definition in the contract or agreement of the parties default includes only the following situations:

1) Non-payment of one or more installments; or

2) The debtor sells, gives away or disposes in any other way of important collateral; or

3) Important collateral is taken by another creditor to satisfy another debt; or

4) The debtor fails to repair severe damage to important collateral; or

5) The debtor fails to keep important collateral insured where a contract requires that he do so; or

6) The debtor does any other think prohibited in the contract, as long as his actions reasonably impair the creditor's right to payment or any other rights to which he is entitled.

A consumer would be deemed in default (Section 2), only if he has failed to pay one or more installments, or has disposed of the collateral in a way that increases the risk to the creditor of non-payment, or has failed to repair significant damage to the collateral, or has failed to procure or maintain in effect any insurance required, or has in any other way impaired the likelihood that he will pay or perform his agreement if such other way is specified in the contract.

(Goods and Services Installment Sales Act - Present law "default" means default of any obligation of a contract. House Bill 170 imposes the requirement that the violation of any term of the contract must impair the likelihood of payment or performance by the debtor.)

(Home Improvement Finance Act - Has same provision as Goods and Services Installment Sales Act.)

(Motor Vehicles Sales Finance Act - Default defined: Differences; failure to pay tax or to provide proof of payment of tax on vehicle is specifically mentioned, together with unlawful use of motor vehicle; 4A2 supplements by adding the provision of violation of any other term of the contract which would impair performance or payment, and disposal or failure to maintain collateral properly, or failure to procure or maintain insurance.)

(UCC - No definition of default)

"Household" - Should be deleted from bill because household has common meaning in the law and is further defined in Uniform Commercial Code.

"Supplying Consumer Goods or Services" (p9) line 22. Selling, leasing, assigning or awarding by chance or by any other means, consumer goods or services, and includes any solicitation by a supplier with respect to any of these means of supplying consumer goods or services (door-to-door solicitation or mail solicitation).

The above definitions of consumer, consumer goods and consumer services make it clear that the intended applicability of the act is only to transactions made by consumers for their own personal use. Transactions between merchants would be excluded.

This restriction of applicability is compatible with the underlying purposes of this bill. It is generally conceded that there is an equality of bargaining position as between merchants and, therefore, there is no need for the legislature to interfere with their free contracting rights. By the same token, the tremendous inequality of bargaining position that sometimes exists between merchants and consumers has created the necessity for this legislation.

Section 3. Disclaimer and Remedies for Breach of Warranties

In early common law (law derived from cases, as opposed to legislative enactment or regulations promulgated by the executive branch) when two parties entered into a contract, the law presumed them to be of equal knowledge unless there was intentional concealment or deception by one or the other parties. Consequently, a consumer was assumed to be as knowledgeable as the merchant with respect to the goods or services purchased, and he purchased an item largely at his own risk. The more advanced our technology became, the more ludicrous became this presumption and the legal concept of warranties was introduced in an attempt to even the score. The merchant would have to guarantee (either expressly or by implication) that the goods were fit for their usual intended use (that they were merchantable; e.g., a pair of dress or leisure shoes is presumed to be fit for normal walking) or be fit for a particular puspose; a warranty for particular purpose refers to a situation where the seller has reason to know any particular purpose for which goods are required, and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods. (For example, shoes selected particularly for use in mountain climbing; an ordinary pair of dress or leisure shoes would not be suitable for this purpose). Implied warranty is one that is not expressly given by the seller, but which, by operation of law, is given to the buyer by implication. Implied warranties cover both a warranty of merchantibility and one for a particular purpose.

However, merchants found a convenient device to absolve themselves from liability if the goods were defective by merely making as part of the contract, a provision which waived this requirement that goods be "merchantable" or "fit for a particular puspose".

Section 3A (p9) line 29. Would prevent a supplier or manufacturer of new consumer goods from disclaiming (denying) liability under these implied warranties. The supplier does not have to furnish an express warranty, but, in any event he cannot disclaim implied warranties). Under the recently enacted Federal Law on warranties, (Magnuson Act) PL 93-637, on which this subsection is based, or some extent, no express warranty is required, but if an express warranty is given, implied warranties cannot be disclaimed,

Section 108. The practice of giving an express warranty while at the same time disclaiming implied warranties often has the effect of limiting the rights of the consumer, rather than expanding them as he might otherwise be led to believe. The Federal Law permits disclaimer of implied warranties only in the absence of an express warranty or in the absence of a service contract entered into at the time of sale or within 90 days or when an express warranty is limited (see discussion below). Section 3A is more protective of the consumer, because it provides that in no circumstances can implied warranties be denied on new merchandise.

(Section 3A changes the UCC implied warranties of merchantibility and fitness for a particular purpose may be disclaimed).

Under this subsection, a supplier would be prohibited from limiting damages for personal injuries arising out of any breach of warranty. (Injuries from an exploding soda bottle; there is an implied warranty that a bottle does not explode). This provision is more protective of the consumer than the Federal Law (Section 108b and 104A3), which does permit limitation of damages when a limited written warranty is involved if such limitation is conscionable (fair). (If the written warranty limits damages, implied warranties may be comparably limited). This provision of Federal Law does create a rather large loophole for the supplier of consumer goods.

(Section 3A changes UCC; under 2-316(4), 2-718, 2-719, damages for personal injuries may be limited).

Section 3B (p10) line 5. Also regulates the limitation of damages for breach of implied or express warranty to the repair or replacement of the defective parts. Under Federal Law (Section 108b and 104(a) supplier can limit such damages (see discussion on limitation of damages for personal injuries). Section 3B permits limitation only if the supplier complies with the requirements of this subsection. The seller would not be able to do this unless the supplier or manufacturer maintains place of business within this state or within 100 miles of the point of sale through which warranty service is effected within a reasonable period of time after request by the consumer. Federal Law also has no distance limitations; only mentions reasonable time, no mention of place. For example, the place of repair could be in another state if more convenient to the seller and consumer. If the sale is in Philadephia, and the nearest service place is in Pittsburgh, the repair could take place in Camden, New Jersey, if there is a repair location in Camden. For the suppliers or manufacturers convenience, the work could be sublet; it does not have to be performed at the place owned by the seller or manufacturer.

In any event, no limitation to repair or replacement of defective parts would be effective if the supplier has tried twice to fix the item and has failed. (Federal Law contains no such provision). If the second attempt to fix the item fails, the consumer would be able to revoke acceptance (return the item and recover his purchase price minus the reasonable value to the consumer of the actual use made of the consumer goods. If the second attempt fails, the consumer would also be entitled to recover reimbursement of any extra expenses he incurred for use of substitute goods or services while the consumer

goods were held for repair, if such holding was for more than 10 days at any one time. Under Federal Law, revocation is permitted, but the Federal Law does not fix a maximum of two unsuccessful attempts. Federal Law allows reimbursement of extra expenses, but does not provide specific time frame, merely "reasonable".

(Section 3B UCC; limitation of damages for replacement of parts is permitted.)

Section 3C (p10) line 25. This subsection refers to the above subsections and provides that if a supplier of consumer goods wishes to dispose of used merchandise, he still may supply those goods on an "as is" or "with all faults" basis. The supplier must, however, provide the consumer with a notice (in 12 point, extra bold type or larger) to the effect that the goods being purchased are "as is" or "with all faults". This means that no warranty or guarantee is given, and that the buyer must bear the full risk that these goods might be defective. In other words, the supplier is not responsible for detecting and informing the consumer of all defects. This subsection will make it relatively easy for the merchant to sell goods "as is" or "with all faults", while at the same time provide reasonable protection for the consumer. This is consistent with Federal Law, Section 104(a)(3) which requires that all disclaimers be conspicuous.

(Under UCC, "as is" or "with all faults" goods can be excluded from the warranty, but Section 3C supplements this law by adding a strict notice provision.)

Section 3D (p11) line 10. This subsection prohibits a supplier or manufacturer of goods or services from denying liability (disclaiming) under an expressed warranty or limiting the remedies or damages in an expressed or implied warranty (3B), collectable by the consumer unless the contract clearly discloses in a manner comprehensible to the average consumer served by that supplier the extent to which these limitations exist. (Federal Law has similar provisions).

Section 4. This section expressly prohibits a consumer from waiving certain rights conferred to him by this bill and other existing statutes. The importance of this section can not be overemphasized. The suppliers of consumer goods could very effectively restore themselves to a superior bargaining position by merely asking the consumer to waive (give up) his protection. The consumer would have little choice; accept the terms or do not finance the purchase, if it were not for the following restrictions:

Section 4A1 (p11) line 22. The consumer is not permitted to waive any claim or defense that he may have against the supplier, or assignee. That is, a consumer may not give up his right to defend against a creditor's lawsuit, nor may he give up his right to sue the creditor for any breach of the contract.

(Goods and Services Installment Sales Act, Home Improvement Finance Act, and Motor Vehicle Sales Finance Act are all the same as HB-170.

(UCC does permit waiver of defense.)

Section 4A2 (p11) line 26. This subsection would prohibit a consumer from giving a supplier or an agent or employee or assignee of the supplier permission to enter the consumer's premises and unlawfully enforce terms of the contract, that is, the consumer could not give the seller the right to use "self help" and take the item back by force.

However, the supplier or the assignee or agents or employees could be given the right to peacefully enter the premises of the consumer and recover property after the consumer has defaulted. (See Section 2).

Section 4A3 (p12) line 3. It would be a violation of this act for a seller to include a term by which the consumer gives up the right to sue the seller for any violation of this act or for any repossession of goods by force or any other wrongful act committed in the enforcement of the contract.

(UCC - No similar provisions)

(Goods and Services Installment Sales Act, Home Improvement Finance Act, and Motor Vehicle Sales Finance Act have the same provisions and are all the same as HB-170.)

The consumer and supplier would, however, be permitted to settle their differences out of court by entering into a settlement. If a consumer has sustained property damage, for example, he could settle with the supplier or transferee or agent or employee.

Section 4A4 (p12) line 10. The effect of this subsection is to prohibit the consumer from waiving his right to challenge venue.

The Question of Jurisdiction is which county court has the power to hear a particular case.

The Question of Venue centers on which court among those having the power to do so will hear the case.

The rationale behind this subsection is that in many instances it is inconvenient for a consumer to have to travel from the county in which he may reside at the commencement of the action. For example, if the consumer signed the agreement in Philadelphia and resided in Erie County when the suit is begun by the supplier, this would be inconvenient for him to travel across the state, with his witnesses, or to have to seek an attorney in a strange area of the state. Unscrupulous merchants have been known to deliberately begin suit in a county distant from where the consumer is located, in order improperly induce him to compromise his desire to fight the suit to the fullest extent.

If the consumer no longer resides in this state, the same rationale would no longer apply, and the supplier or assignee or person acting in their behalf can, therefore, sue either in the county in which the consumer resided when he signed the contract or, where appropriate, the county where the goods in question have become so attached to real property so as to become a part of the real property, in the county in which the real property is located (for example, siding as part of the walls of a house). Under present law, consumer

contracts generally contain such provisions, where sellers effectively can make a binding determination as to which court will hear a case arising under the contract.

Section 4A5 (p12) line 21. This subsection would prohibit the consumer from waiving his rights as provided in Section 12 of this act. (See p19 line 14)

Section 4B (p12) line 23. This subsection provides that a supplier's use of any of the clauses in a contract listed in 4A shall be a violation of this act; if any of the prohibited clauses enumerated above are used in an attempt to effect collection from a consumer (or obtain a settlement), that would be an additional violation. For example, if the supplier misinforms consumer by telling him that he has waived a defense (violation of 4A1), and consumer either pays the bill without further protest, or is tempted to compromise his rights by wrongful settling with the supplier, this would constitute another violation.

Section 5. Control of Acceleration Clauses

A device that has often caused low or moderate income consumers much agony has been the sudden unexplained calling of his note. A creditor may, without warning, decide that his interest is in jeopardy and inform the consumer that all remaining payments on the account are due. Chances are extremely great that the consumer would not have the means available to pay off the obligation and this rapid acceleration could cause him to lose the goods purchased and possibly additional collateral.

As Mr. Firmin, Community Legal Services, Inc. of Philadelphia testified before the Committee on April 23 (p38), approximately 1% to 4% of debtors defaulted. In this regard, we should note that Mr. David Caplovitz in his book Consumers in Trouble, The Free Press, 1974 p.53, indicates that debtor's loss of income is the single most reason for default in approximately 43% of the cases surveyed. This usually indicates not a lack of honesty on the part of the debtor, but inability to pay. Approximately, 1% of default could be attributed to deception and fraud on the part of the seller (shoddy merchandise or misleading advertising). Out bill encourages the debtor to make every reasonable attempt to prevent losing the merchandise by giving him time to obtain the funds needed to cure the situation.

Section 5A limits the use of acceleration clauses to the following circumstances:

Section 5A1 (p13) line 6. The supplier or assignee must first give the consumer 14 days prior notice of the intent to accelerate, and the grounds for acceleration, and the consequences of default and explain how the default may be cured (before the acceleration date) through payment or performance (e.g., repair collateral). As specifically mentioned, in this subsection, the consequences of default are:

1) Entire amount of the bill will become due immediately;

2) Any collateral given under the sales contract may be immediately peacefully repossesses (this ties in with discussion of 4A2), and;

3) Legal action may be started before or after repossession.

This notice must be sent in a form that complies with the form set forth in the bill.

and,

Section 5A2, (p14) line 29. The consumer shall be in default. "Default" means despite any other definition in the contract or agreement of the parties, default includes only the following situations:

1) Non-payment of one or more installments; or

2) The debtor sells, gives away or disposes in any other way important collateral; or

3) Important collateral is taken by another creditor to satisfy another debt; or

4) The debtor fails to repair severe damage to important collateral; or

5) The debtor fails to keep important collateral insured where a contract requires that he do so; or

6) The debtor does any other thing prohibited in the contract, as long as his actions reasonably impair the creditor's right to payment or any other rights to which he is entitled.

and either,

Section 5A3 (p14) line 30. The consumer has not within the 14-day period of the notice cured the default (through payment or performance) or given assurances of payment or performance. Adequate assurance of payment or performance means a) offer of payment or payment of part or all of an imstallment, so that the creditor is satisfied that the buyer will be able to continue regular payments, or b) part performance of any other obligation under the contract so as to reassure the creditor that his collateral or other security is not in jeopardy.

or,

Section 5A4 (p15) line 3. The default is the third default of the consumer during the term of the contract. Under this provision the seller can accelerate immediately. This gives the debtor ample opportunity for a good faith effort to cure the default, and, at the same time is fair to the creditor, because it discourages bad faith on the part of a debtor who might take advantage of acceleration indefinitely, and permits the creditor to receive satisfaction within a reasonable time period (sue on default).

Section 5B (p15) line 5. Once a default has been cured by the consumer, the acceleration would terminate, and the original payment schedule would resume. In order for the consumer to cure the default and be placed back in good standing, he would have to pay back all installments that fell due during the default period and would also have to pay any late charges and fee for actual cost of service of the notice.

Section 5C (p15) line 12. This section sets forth requirements of notice whenever a supplier wishes to accelerate. The notice of acceleration would have to be mailed, certified mail return receipt requested, in time to be received by the consumer in the current course of amil, or delivered not less than 14 days before the date at which the debt would become due by acceleration. Mailing in accordance with reasonable estimates of time required for delivery would be regarded as compliance with this subsection, but if for some reason the notice was not received by the consumer until less than 14 days before the date on which the debt would become due by acceleration, the consumer would still have 14 days to cure the default. (For example, even if the creditor made reasonable attempts to comply with this subsection and the notice was recieved by the consumer 11 days before acceleration would begin, this bill would delay the beginning of the acceleration for 3 days, or the number of days necessary to make up the difference between 14 days minimum required by this subsection, and 11 days, the notice period actually given by the creditor. (14 minus 11 = 3)

(Goods and Services Installment Sales Act - Under present law acceleration is permitted upon default of any obligations in contract. Section 5 supplements present law with requirements of notice and right to cure. HB-170 limits default to a violation which would reasonably impair the likelihood of payment or performance.

Home Improvement Finance Act - Present law permits acceleration upon default of any obligations. HB-170 limits the scope of default by permitting default only when there is reasonable likelihood of impairment of payment or performance, and supplements present law by adding requirements of notice and right to cure.

Motor Vehicle Sales Finance Act - HB-170 changes present law by adding as a ground for default as anything in contract which would reasonably impair payment or performance, loss of failure to maintain collateral or maintain insurance and adds notice, cure requirements.

(UCC 1-208)

HB-170 strengthens in two ways:

1) Under present law acceleration is permitted if the creditor has a good faith belief that the payment or performance would be impaired by the debtor (deems himself insecure). The burden of proving lack of good faith on the part of the creditor rests on the debtor. HB-170 shifts the burden by requiring the violation to actually be one that impairs the likelihood of performance or payment.

2) HB-170 supplements the UCC by adding provisions about notice and cure.)

Section 6. Entry of Judgments by Confession

Under current law, confession of judgment is that device by which the debtor authorizes, by signing a contract or judgment note containing a clause, usually in fine print and obscured by various other provisions, the creditor to enter final judgment on the obligation without notice to the debtor before entry. The judgment may be entered, depending upon the terms of the particular clause, either before or after default by the debtor, with or without attorney's fees, and may give rise to liens against personal property, real estate, or both, which may ultimately serve as the basis of execution upon and sale of such property at a sheriff's sale.

HB-170 alters this procedure as follows:

1) Although entry of judgment continues to be permitted, such judgment may not serve as the basis for execution unless the creditor files a complaint and follows due process under an action of assumpsit. However, the lien of the judgment remains on record, preserving the creditor's priority, unless he ultimately does not prevail in his suit.

2) Such judgment may not be entered unless the unpaid amount of the debt is at least $1,000.

3) When the judgment creditor is paid off or the unpaid amount of the debt is reduced to below $1,000, he must have the records in the prothonotary's office amended to show that the judgment has been satisfied.

Other states have recognized the offensiveness of the waiver by a debtor of any right to a hearing in court before a creditor executes a lien on the debtor's possessions.

Entry of judgment without the debtor's knowledge gives the creditor a powerful weapon and enables him to coerce payment by the debtor who might otherwise have reasonable grounds for withholding payment.

According to the "Report of the National Commission on Consumer Finance" on Consumer Credit in the United States (Dec. 1972), only "seven states permit confession of judgment by warrant of attorney prior to commencement of suit. Of these, only in Illinois, Ohio, and Pennsylvania has the use of confessions been widespread.

In 1961, a prominent legal scholar declared that a non-notice type of judgment violated the 14th amendment because it did not meet the requirements of procedural due process (or procedural fairness). Professor Dan Hopson argued that the consent to have judgment entered was not consent but part of a contract of adhesion. More specifically, we mean that there is inequality of knowledge, inequality of ability to understand the complexities of an action, and inequality of opportunity to go elsewhere. He said the signer of a note confessing judgment did not, in fact, consent to such a provision since he had no effective choice.

A court decision Swarb v. Lennox 314 F. Supp. 1091 (E.D. PA 1970), aff'd. 405 U.S. 191 (1972) affirmed the above and banned the Pennsylvania practice of taking judgments by confession and thus obtaining a security interest in the debtor's property before the debtor had an opportunity to be heard. This decision was limited and in effect said that a right to a hearing may be waived, no intelligent waiver could be made regarding consumer credit transactions when the consumer earned less than $10,000.

The report reached a conclusion that, "No consumer credit note or contract should be permitted to contain a provision whereby the debtor authorizes any person by warrant of attorney or otherwise, to confess judgment on a claim arising out of the consumer credit transaction without adequate prior notice to the debtor and without an opportunity for the debtor to enter a defense".

Section 6 implements the above recommendation by doing the following:

Section 6A (p15) line 22. A consumer credit contract may provide for confession of judgment but such confession would have to be pursuant to the provisions of this act. The important feature of this act for which there would have to be compliance is the requirement that a) the prothonotary of the court in which the judgment is filed must note that the judgment (1) complies with this act and, (2) if the judgment so confessed is not confessed subject ot the limitation that the lien of the judgment shall not bind any real estate which is used or expected to be used as a principal residence of the consumer, then evidence must be supplied to the effect that the judgment is in compliance with the Federal Consumer Credit Protection Act. As a practical matter, the best evidence that the creditor could file with the prothonotary that he has compiled with the Federal Consumer Credit Protection Act is a copy of the sales contract which notifies the consumer of the 3-day right to rescind (return the merchandise). The significance of this is the fact that whenever a lien could be imposed on the residence of the consumer, the Federal Act requires notice of that fact and a 3-day right to rescind.

Hence, the creditor has a choice: 1) He does not attach the real estate which the consumer uses as his residence, or 2) if he does, he must grant the consumer a 3-day right to rescind.

Section 6B (p16) line 11. No confession of judgment could serve as a basis for a levy of execution until after the creditor alleges that the debtor has defaulted and the fact that he has defaulted is established in court. (Filing a suit in Assumpsit.)

This subsection allows a confession of judgment to operate as a lien, but the property subject to the lien could not be sold or disposed of until after there was a full hearing. The hearing gives the consumer the opportunity to contest whether or not he has been in default and an opportunity to raise his defenses of defects in the product, etc. (This prohibition of execution goes beyond the Swarb opinion because it applies to debtors of all incomes).

Section 6C (p16) line 18. This subsection would prohibit any confessions of judgment in any event if the amount unpaid in the consumer credit transaction at the time of attempted entry is less than $1,000.

Section 6D (p16) line 22. Fees for entry and satisfaction of the judgment may not be charged to the consumer.

Section 6E (p16) line 26. A creditor would be required to notify the prothonotary as soon as the debt is satisfied or within 10 days after receipt of satisfaction.

Section 6F (p16) line 30. For purposes of this section, satisfaction would include reduction of the amount unpaid to a sum less than $1,000. For example, if the consumer owes $1,200, confession could be entered provided that it complies with this section. However, suppose that the amount unpaid is reduced to $1,000 over the course of several payments. At this point, 6C, is applicable and confession could not be entered as long as the amount unpaid is less than $1,000. In other words, 6F and 6C are directly related to one another.

Rules of Civil Procedure - Permit confession of judgment - therefore, amends by present law by adding consumer safeguards.

Sections 7, 8, 9, and 10. Deal with the concepts of holder in due course and related lender. These are interrelated concepts that are extremely important to the general objective of this bill to bring the consumer into an equal bargaining position with the supplier of goods and services the consumer wants.

In 1758, in the case of Miller v. Race, the King's Bench of England held that a Bank of England promissory bearer note was "treated as money; as cash" by business men dealing "in the ordinary course and transaction of business". The court decided that when such a note was stolen and thereafter sold to a person who paid fair value and had no notice of the theft (a bona fide purchaser), that bona fide purchaser would prevail over all persons claiming the note, even the original owner. The rationale for this decision was based on the fear that the growth and soundness of commerce would have been impeded or destroyed if a contrary decision were reached. This fear was probably well-founded because promissory notes of the Bank of England were not "legal tender", but were nevertheless "passed from hand to hand, serving many of the purposes of paper money, which did not exist in England at the time". To allow persons other than bona fide purchasers to claim ownership to the note would indeed have an adverse affect on commerce.

With the development of paper money, the emphasis on affording a good faith purchaser of notes and contracts freedom from claims to the instrument gradually shifted to permit the good faith purchaser to cut off defenses which the obligor may have against paying the note.

Today, under the Uniform Commercial Code an individual can qualify as holder in due course if he takes an instrument for "value", "in good faith" and "without notice that it (the instrument) is overdue or has been dishonored or of any defense against or claim to it on the part of any person". The status of holder in due course provides many advantages against the individual obligated on the instrument, and these advantages are brought into sharp focus where the instrument is used in a consumer credit transaction.

In a typical consumer credit purchase of goods, the purchaser signs an installment note to the seller agreeing to repay the unpaid portion of the purchase price plus finance charges in accordance with a stipulated repayment schedule. The seller, in turn, "negotiates" the note to a financing instutition (usually a sales finance company or bank). In most of these transactions the financing institution has the status of holder in due course and can enforce the purchaser's obligation on the note irrespective of any defenses which the buyer may have against the seller regarding the underlying sale. For example, if a purchaser signs a note as payment or partial payment for a refrigerator, the financing institution holding the note as holder in due course is entitled to receive payment even though the refrigerator was defective, was never delivered, or, if delivered was not as represented at the time of the sale.

There was testimony at the committee hearings to the effect that approximately 39 states have either abolished or restricted holder in due course and waiver of defense. There are no indications that credit in the consumer area has been overly affected as a result of these reforms. (Testimony of Joseph B. Sobel, Pennsylvania Legal Services Center, John C. Firmin, Community Legal Services, Inc., Philadelphia and David Scholl, Delaware County Legal Assistance Association, Inc., Chester, Pennsylvania (Apr. 23 - pgs. 14-18) and Lewis Taffer, Neighborhood Legal Services, Pittsburgh, (Apr. 23 - p. 27 & 28).

The National Commission on Consumer Finance, December 1972, supported the abolition of holder in due course, page 36-37. Their rationale was that placing the burden on the lender industry (as assignee) to police the consumer finance industry was reasonable and practical. The lenders are in an excellent position to pressure the sellers into maintaining high standards of competency and fairness in their dealings with consumers. If "fly-by-night" operators are driven from the market as a result of this supervision and pressure, everyone is really better off. As a practical matter, assignees can protect themselves by demanding a guaranty or reserve account from the seller so that the lender would be indemnified for any loss resulting from his liability to the consumer, as has generally been the situation in the area of bank financing of automobile purchase since 1947, with the passage of the Motor Vehicle Finance Act, which prohibits the use of common defense cut-off devices, such as holder in due course and waiver of defense clauses in such transactions.

Without question, the sections abolishing holder in due course are the most important sections of this bill. Lewis Taffer's testimony at the committee hearing (Apr. 23 - p. 24-25) illustrated a typically unfortunate case involving shoddy merchandise. A company in Pittsburgh said that it had a device which could be attached to the home furnace and this device was electrostatic in nature and would eliminate up to 90% of the dust and pollen in the air. Many persons with members of their families who had severe allergy problems purchased this device. It was a very large metal box. The device was installed. A major bank in Pittsburgh provided the loan forms to this company. The Bank had a written contract with this company that would be the exclusive company to have these loan forms sent to. Boxes were installed in 1,000 homes. It never worked. It was a total fraud.

The fly-by-night seller was put out of business by the attorney general, but the bank, which was a related lender in this instance, could and did rely on its protected status and continued to collect on obligations incurred by consumers who had been taken advantage of by a seller which relied on bank's financing to continue a scheme which was a proven fraudulent by attorney general of Pennsylvania. The bank could continue to do so because, although its officers had participated in an ongoing financial arrangement with the sales company and provided consumers under this arrangement with the funds needed for worthless purchases, the bank's relationship with the sales company is of absolutely no legal consequence. The consumer transactions are technically ordinarily direct loans. Under HB-170, wuch participation in a sales compaign would subject a lender to all liabilities which would have attached to the Sales Company, had it remained in business.

Lewis Taffer, in his opinion indicated that the bank is at least morally responsible. Our bill will make the bank's legal obligation equal to its moral obligation. Our goal is to prevent any more distressing examples.

Section 7. Limitation on Negotiable Instruments

Section 7A (p17) line 3. Provides that no supplier of consumer goods or services would be able to take as evidence of or security for performance of any obligation of the consumer any negotiable instrument (for example, promissory note) other than a check or bank draft for current collection taken in conditional payment of an obligation presently due.

Since subsequent sections of this bill would abolish the holder in due course concept with respect to consumer transactions, this section is necessary to preserve the negotiability of the check or bank draft. Holder in due course as explained above is derived from negotiability, and consequently it is necessary to specifically state that the negotiability of checks and bank drafts are not going to be affected by the abolishing of holder in due course with respect to consumer transactions.

Section 7B (p17) line 9. Specifically requires the supplier of consumer goods or services wishing to take a written instrument for the payment of deferred consumer obligations to conspicuously mark the instrument "consumer-obligation - not negotiable" in conspicuous type on its face.

This section has the effect of putting everyone on notice (particularly assignees) that the holder in due course is abolished and thus the transaction is subject to all consumer defenses. However, Section 9B (p18) line 3 provides that even if the seller fails to mark the instrument in accordance with the subsection, the assignee is nevertheless still liable for all consumer defenses. Without Section 9B acting in correlation with subsection 7B, the opportunity for abuse would be great.

Section 8. Rights of Assignees of Consumer Contracts or Agreements

This section can be best understood in context with Section 9. Section 9 specifically states that a transferee of a consumer obligation shall be subject to all the claims or

defenses which are good against the person supplying the consumer goods...Section 9 in essence abolishes holder in due course with certain limitations.

Section 8A (p17) line 14. Acts as a limitation on Section 9 in that it provides that an assignee or transferee shall not be liable to the consumer in respect to any claim or defense asserted by the consumer in excess of the amount originally paid by the assignee or transferee for the obligation. For example, if the consumer has an $800 claim against the seller, and if the assignee only paid $400, assignee is only liable for $400.

Section 8B (p17) line 21. Permits a consumer to withhold payments due in respect of a consumer transaction pending settlement of a disposition claim of which notice has been given. For example, if the consumer has purchased a refrigerator, and gives notice to the assignee of a defect, he is not obligated to make any further payments due pending settlement of the claim. This subsection would prevent the type of incident regarding the "pollution control devices" (mentioned above).

Section 9A. This subsection specifically states that a transferee of a consumer obligation arising out of a consumer transaction is subject to all claims and defenses that the supplier is subject to, except:

Section 9A1 (p17) line 30. Claims and defenses arising from other transactions between the supplier and consumer which would accrue after the consumer has been notified of the transfer. (Let us suppose that the consumer purchases a stove; subsequently the note is assigned and the consumer is notified of the transfer. Later, the same consumer purchases a freezer from the same seller. A defect is found by the consumer in the freezer. Under 9A1, the assignee, although he would be liable for any claims arising from the first transaction involving the stove, he would not be liable for any claims arising from the second transaction involving the freezer.

Section 9A2 (p18) line 4. A transferee of a check or bank draft taken for current collection by a person supplying consumer goods or services may become a holder in due course. This section means that if the lender and the buyer had engaged in previous transactions, which constitutes a direct loan and not a related one, then the transferee could take checks for payment of debts already due.

Section 9B (p18) line 9. This section strikes at another device used by creditors and merchants to provide themselves with immunity from defenses to payment which the buyer may be able to assert against the seller. The "Waiver of Defense Clause" operates the the same way as the Holder in Due Course doctrine. A waiver of defense if part of an installment sales contract (as distinguished from a note) and, in effect, provides to the assignee of the contract the benefits of negotiability and HIDC status through a contractual provision.

A typical waiver of defense clause reads as follows:

"If the seller should assign the contract on good faith to a third party, the buyer shall be precluded as against such third party from attacking the validity of the contract on grounds of fraud, duress, mistake, want of consideration or ..."

The Uniform Commercial Code specifically permits such clauses, unless there is a "statute or decision which establishes a different rule for buyers or lessees of consumer goods.

Section 9B states specifically that transferees and assignees are liable to the consumer for defenses whether the transferred obligation is evidenced by a negotiable instrument, whether or not there is a waiver of defense clause (waiver of defense clause is prohibited

by Section 4A1 of this bill), whether the supplier has marked the instrument as required by Section 7B (discussed above) or whether the transferee is an immediate (related lender) or remote (the usual) transferee of the supplier.

Section 9C (p18) line 17. This subsection confers a necessary exception to transferee liability in the case of a depository, collecting or payor bank when those banks handle in the course of current collection any item "made, drawn or accpeted" by a consumer. This section is directly related to Section 7A which insures that negotiability of checks and bank drafts would not be affected by abolition of holder in due course.

Section 10. Related Lenders Subject to Consumer Claims and Defenses

In addition to the devices dealt with above (HIDC, waiver of defenses) many dealers and financing institutions have devised another effective method for the lender to cut off any defenses the buyer may have against the seller. The seller merely suggests that the buyer borrow money for the purchase by direct loan from a cash lender and direct the buyer to a financing institution willing to make the loan.

Theoretically, the loan is an independent transaction with no relation to the purchase of goods. As a result, the obligation to repay the debt would not be subject to defenses arising out of the purchase even if HIDC and waiver of defense clauses were limited.

The routine referral by a seller to a lender or group of lenders could result in the creation of what may legally be referred to as a related lender. This referral by a seller (supplier) of a consumer to a select group of lenders subverts any possible good effect that could be attained by restricting or abolishing HIDC and waiver of defense damages. Therefore, Section 10 of the bill sets forth criteria that may establish the existence of a related lender. Once a lender is considered related, Section 10A (p18) line 24 provides: "A lender who is a related lender with respect to a person supplying consumer goods or services, shall be subject to all claims and defenses of the borrower arising out of the consumer transaction for which the loan was made..." The section creates an exception to this with respect to loans made for agricultural purposes and restricts the lender's liability for any one consumer transaction" to no more than the amount originally loaned in respect to that transaction.

Section 10B (p19) line 5. Sets forth what needs to be established for a lender to be related. A related lender is one whose participation in consumer transactions is arranged by the seller of the consumer good purchased. Knowledge alone on the part of the lender that the proceed of the loan shall be used to purchase shall not cause lender to be a related lender. This subsection protects a bank that merely provides services to a regular customer by providing forms, etc. In addition, one or more of the following provisions must be applicable.

Section 10B1 (p19) line 15. The lender or a principal officer, principal shareholder, partner, owner or principal supplier of capital is so connected with or related by blood or through marriage to the supplier or one of the supplier's principal officers, principal shareholders,

partners, owners or principal supplier of capital, other than that supplied by lender, or that dealings between the lender and the person supplying the consumer goods and services would not be at arm's length, or

Section 10B2 (p19) line 24. The lender has furnished the seller with forms for loan applications and the form was furnished to the consumer by or on behalf of the person furnishing the consumer goods and services, or

Section 10B3 (p19) line 28. The supplier receives a fee or other thing of value (for example, commission) from the lender in respect of the loan or otherwise has participated (directly or indirectly) with the lender in the finance charge on the loan, or has agreed to purchase from the lender, upon default, any collateral held for the loan, or

Section 10B4 (p20) line 4. The lender (directly or indirectly) controls or is controlled by (directly or indirectly) - or is under direct or indirect common control with the supplier; or

Section 10B5 (p20) line 8. The supplier has referred the consumer or three or more other borrowers to the lender for loans to acquire consumer goods or services from the person, or

Section 10B6 (p20) line 12. The lender and the person supplying the consumer goods and services are engaged in a joint venture (they are partners for limited purpose and they share in the proceeds) to produce consumer obligations payable to the lender, or

Section 10B7 (p20) line 15. The lender has recourse to the seller for non-payment of the loan through guaranty, reserve account, or otherwise in the event of the consumer default.

Page 18 - after 10C insert: ... 17 ... The issuer of a third party (someone other than the seller) ... goods or services are acquired by the

Our provisions with regard to issuers of credit cards are more protective of consumers than the Federal Law in the following ways:

1. **Federal cut-off for liability is $50; ours is $40**
2. **Federal Law limits liability to the amount owing at the time of notice of defense. We limit liability to the amount lent by lender.**

Section 10C3 (p20) line 24. Were acquired ... ... if in another state, at a place within 100 miles of the consumer's residence

Section 10D (p20) line 27. This section subjects any contract or agreement between the related lender and the supplier and/or consumer to Section 4 of the act pertaining to prohibited contract terms.

Section 11. Limitation on Liability of a Transferee or Related Lender.

Amendment needed to delete this section.

Goods and Services Installment Sales Act - a Lender of this act may become effectively a holder in due course by giving notice to the consumer that the contract has been assigned. If the consumer does not raise any claim or defenses against the lender within 45 days, his claims and defenses are completely cut-off. The status of related lender does not exist, therefore, a merchant can refer a potential buyer to a lender who is "in bed with" the seller and thus cutting off any claims or defenses raised by the buyer.

Motor Vehicle Sales Finance Act - Under the provisions of this act, the buyer defenses may not be cut off by the use of any method customarily employed either against a seller or lender.

Home Improvement Finance Act - Under transactions covered by this act, a lender may achieve the same position as under the Goods and Services Installment Sales Act above. However, he achieves such status after only 15 days rather than 45 days.

Section 12. Prohibited Terms and Security Interests

Section 12A (p21) line 9. Deals with what is commonly referred to as the "balloon payment". The balloon payment has presented a very serious problem for the consumer. The following example will shed some light:

If a consumer signs a $2,000 note payable in eleven installments of $150 and a final installment of $350, such a payment schedule could lull him into a pattern of $150 payments. When the final $350 payment comes due the consumer may not have properly budgeted for this payment leaving him the chance of defaulting or of refinancing the balance due. Under this pressure, the debtor is most susceptible to an increase in the APR (annual percentage rate) on the balance. In many cases, a balloon payment is simply a device to encourage the refinancing of some portion of a debt often at a rate in excess of the original rate.

This subsection would provide that no consumer transaction (except a revolving plan) may have any scheduled payment including interest or finance charge which is more than twice as large as the average of the earlier scheduled payments unless the consumer has the option to refinance the amount of that payment upon the same interest rate and other terms and without penalty in payments no larger than the average of the earlier payments.

Home Improvements - No mention in present law.

Goods and Services - irregular payments prohibited but not defined 69 PS 1503

Motor Vehicles - No mention

UCC - No mention

Section 12B, 12C. These sections are designed to limit and hold into balance "cross-collateralization." Cross-collateralization occurs when a creditor takes a security interest not only in the item of the credit sale but also in other goods or property of the purchaser. For example, if a consumer buys a TV and the creditor retains a security interest in the set and also takes a security interest in other appliances of the consumer, the creditor has cross-collateral.

Cross-collateralization may also occur in "add-on" sales. In this type of sale, a creditor "secures" a new sale by adding the purchase to an existing secured installment sales agreement and not relinquishing security interest in previously purchased goods as each item is paid for.

Section 12B (p21) line 18. Of the bill goes to the "add-on" cross-collateralization. It requires payments made by the consumer to be applied to the first transaction and once a transaction is paid in full, the security interest in that item terminates.

(Home Improvement Finance Act - No mention in present law)

(Motor Vehicle Sales Finance Act - No mention in present law)

(UCC - No mention in present law)

(Goods and Services Installment Sales Act - Similar provisions)

Section 12C (p21) line 27. Restricts the right of a creditor to obtain a security interest in other property of the consumer. This section provides: "No contract or agreement entered into in respect of a consumer transaction shall grant a security interest in goods not acquired from or financed by a direct loan from the same secured party. This section specifically exempts loans made by a non-related lender. This exemption of non-related lenders is necessary, and the effect of the section is to prevent creditors from taking overbroad collateral to protect their interests if the lender is found to be related to the seller (discussed above), and yet at the same time will not prevent a consumer from borrowing money from a bank to pay his medical bills using his automobile as the collateral.

No mention of either of the four: Home Improvement Finance Act, Goods and Services Installment Sales Act, Motor Vehicle Sales Finance Act, and UCC.

Section 13. Consumer Property Exempt from Execution

Today, for the most part, judgments for money or for possession of property are enforced by writs of execution.

If it is a money judgment, the writ of execution authorizes the proper state officer (a sheriff or constable) to seize any property (including the home) of the defendant not exempt by statute from seizure, sell it at an execution sale, and apply an proceeds derived toward satisfaction of the judgment.

Section 13A. Provides exemption for the following property:

Section 13A1 (p22) line 8. All medical health equipment and supplies used for health purposes by the debtor, the debtor's spouse and dependents;

Section 13A2 (p22) line 11. Tools of the trade, including any income-producing property used in the principal occupation of the debtor not to exceed the value of $500.

Section 13A3 (p22) line 14. Clothing, and other wearing apparel, and furniture, furnishings, appliances and fixtures usually used for household purposes in the debtor's principal residence to the value of $1,500.

HB-170 amends the present law, but the following two categories of exemptions under the present law remain even after the enactment of HB-170: bibles and school books; HB-170 enlarges the categories of exemptions with the exception that property in which there is a purchase money security interest is not exempt.

Section 13B (p22) line 18. Provides for the evaluation of property that is subject to exemption to determine whether or not the value is in excess of the exemptions. The dollar value of all property coming within any category of exemption set forth in subsection A shall be initially established by the officer making the levy if in excess of the exemption is claimed by the creditor. For example, the creditor asserts that there is $700 worth of tools of the trade. Under subsection A2 this constitutes an excess over the statutory limit of $200 (or $700 minus $500). If the excess so determined is disputed, the officer making the levy shall immediately establish a jury of three citizens from the vicinity, who shall determine the value of the property in dispute by a majority vote; if the amount of excess or its existence is still disputed by the creditor, the value shall be determined by an impartial appraiser appointed by the court and the creditor shall pay the fees and expenses of the appraiser. As used in this subsection the term "value" means the amount which would ordinarily be realized at the execution sale of the property involved.

Section 13C (p23) line 1. The exemptions provided in this bill do not prevent levy upon and sale of property which was purchased or financed from the supplier or lender who now seeks to attach a purchase money security interest (an interest in goods purchased in the transaction in dispute, for example, if the consumer has purchased tools of the trade, and he has defaulted, and judgment has been properly entered against him, this property even though it would normally come under the provision of 13A2, cannot be classified as exempt property because under 13C a creditor has a security interest in the goods that were the subject matter of the transaction; 13C limits the operation of 13A. But, after such levy and sale, the fair market value of the property in the retail market for such property (less 10% costs for resale) shall be credited upon the debt (not the price realized at sale). Let us assume an example where the price realized for the sale is $300, but the fair market value is $500. If the provision of this subsection regarding fair market value were not in here the only amount that could be credited to the consumer would be the price realized for the sale ($300) minus 10% cost of resale ($30), or a total credit of $270. However, under the fair market provision, we will use $500 as a basis and deduct from the 10% for resale $50, or a credit of $450. The fair market value, as can be seen from this example protects the consumer in the event that the property involved has been undersold (whether deliberate or not).

Section 13D (p23) line 10. At the time of levy, the officer making the levy (sheriff) shall give the consumer a notice setting forth exemptions from execution to which consumer is entitled and shall not levy upon a property specifically exempted, except in the event of a purchase money security interest.

Section 13E (p23) line 20. No waiver of exemptions shall be effective.

This subsection complies with the January 1975 opinion of the Pennsylvania Supreme Court (Mayhugh v. Coon) which held that the waiver of a statutory exemption from the attachment was invalid. (Under 12 PS 2161 enacted in 1849, the following property is exempt property to the value of $300, clothing and bibles and school books). The Court, in overruling former cases, noted that "unlike, in former years where the debtor and creditor may have been on a relatively equal basis, such is clearly not the case in our current society, nor can it be seriously argued that today's credit industry would be critically jeopardized or curtailed because the creditor was required in all cases to respect the exceptions". It should also be remembered that the $300 exemption today is worth much less than it was in 1849 because of inflation; therefore, what little protection the consumer has in this area should not be stripped away.

Under the present rules of Civil Procedure the sheriff is the levying officer; he sets aside exempt property and makes appraisals of any property in excess of the exemption. The procedures in HB-170 changes to this by providing the dollar value by initially established by the officer making the levy; if an excess is claimed by the creditor, then if there is dispute then the officer shall establish a jury of three citizens; only then, if the amount of excess is still disputed by the creditor, the value shall be determined by a partial appraiser.

The provisions about crediting to the debtor the amount of excess money realized by the sale of the property.

Section 14. Civil Recoveries

This section provides for civil recoveries.

Section 14A (p22)

When a finance charge is involved in a consumer transaction, the violator of any provision of this act would be liable for each violation to each consumer in an amount equal to the damages actually suffered, but in any event not less than the credit service charge plus 10% of the principal amount of the debt or the time price differential plus 10% of the cash price. For the purpose of this section the term "time price differential" and "credit service charge" are used synonymously and the terms "principal amount of debt" and "cash price" are used synonmously. Let us assume that the cash price is $500 and a service charge is 15%. The minimum recovery in such a case would be the sum of the service charge (or 15% of $500) or $75 plus 10% of the cash price of $500 ($50). $75 plus $50 equals $125. Let us assume another hypothetical. Let us assume the cash price is $10,000. Let us suppose the service credit charge is 15%. 15% of $10,000 would be $1,500; if we add 10% of $10,000 or $1,000 and $1,500 we get $2,500. However, remember that 14A puts a maximum limit of $1,000, therefore, the maximum for this case would be $1,000.

(Goods and Services Installment Sales Act - 69 PS 2204 treble damages applies only to add-on transactions

(Home Improvement Finance Act - No mention)

(Motor Vehicle Sales Finance Act - No mention)

(UCC - 9-507 when service charge is (secured transactions) involved, the same formula as HB-170; this section is derived to some extent from the UCC)

Section 14B (p24) line 1. Pertains to civil recovery when there is no finance charge. The violator would be liable for each violation for not less than 10% of the cash price or total rental to be charged plus $100, but the total liability per customer shall not exceed $1,000. For example, suppose that the cash price is $1,000; the minimum penalty would be 10% of $1,000 which is $100. $100 plus $100 minimum of $200. Let us assume that the cash price is $10,000, 10% of that would be $1,000 and $1,000 plus $100 would be $1,100. But please note that $1,000 limitation for 14B applies. Therefore, this maximum penalty is $1,000.

(Goods and Services Installment Sales Act - No mention. This only applies to "add-on" treble damages (no special category for those cases where finance charge not involved).

(UCC - No mention)

(Home Improvement Finance Act - No mention)

(Motor Vehicle Sales Finance Act - No mention)

Section 14C (p24) line 9. Would allow a consumer to recover fees and expenses of any necessary expert witnesses and any reasonable counsel fee based on time reasonably spent without regard to the amount in controversy. This would apply only when the consumer is successful in the action.

The purpose of these provisions providing stiff damages and recovery of fees is to discourage unscrupulous merchants by making them realize that their unscrupulous activities will result in excessive costs for them, and to make it easier for the consumer to find an attorney who will handle these kinds of cases. The merchant or finance companies or banks usually have sufficient legal talents to handle the situations. Under current practice the creditor recovers attorneys fee from the debtor in the event of default. This subsection will put the consumer on an equal footing with the creditors.

This will encourage prompt settlement by the seller or assignee and would discourage prolonged litigation, as pointed out in Mr. Firmin's testimony (Apr. 23, pgs. 51-57). He pointed out that this was the purpose behind the similar provisions in the Federal Truth and Lending Law which has worked precisely in that way.

In determining the proper legal fees, the court takes into consideration primarily the time spent without regard to the amount but will also take into account any contingency agreements that the lawyer may have made with the consumer.

(No mention of all four: Goods and Services Installment Sales Act, Home Improvement Finance Act, Motor Vehicle Sales Finance Act, and UCC)

Section 14D (p24) line 15. The provision of this section is subject to the provisions of Section 15B. (See discussion below).

Section 15. Public Enforcement

Section 15A (p24) line 17. The District Attorney or Attorney General would be empowered to obtain an injunction to restrain use of methods, forms, contracts or acts whenever they have reason to believe that any person is using or is about to use any methods, form, contract or act that would constitute a violation of the act.

The action could be brought in the county in which such person resides, has a principal place of business or it may be brought in Commonwealth Court.

The courts would be specifically empowered to issue temporary or permanent injunctions and/or to order restitution.

Section 15B (p25) line 3. This section ties Section 15 in with Section 14 (Civil Enforcement) and provides that whenever restitution is ordered, no further individual actions (under Section 14) could be brought. If restitution is not ordered, public action would not preclude private actions. (Please note that Section 14D provides that the provision of Section 14 is subject to the provision of this subsection).

(Supplemental to present law)

Section 16 (p25) line 8. Duties of the Attorney General and District Attorneys

This section specifically confers on the District Attorneys and Attorney General the duty to enforce this act.

(Supplemental to present law)

Section 17. Effect on Other Acts

Section 17A (p25) line 14. Since provisions of this act overlap provisions of the "Home Improvement Finance Act", the "Goods and Services Installment Sales Act", and the "Motor Vehicle Sales Finance Act", this new act will be harmonious where possible with the other existing acts, and where harmony is not possible, this new act will supersede.

Section 17B (p25) line 23. Many of the legal concepts contained in this proposed act are also touched upon in the Uniform Commercial Code. Therefore, Section 17B states that in the case of conflict between the provisions of this act and provisions of the UCC, this act will supersede.

Section 17C (p25) line 26. This section repeals Section 208 of the Home Improvement Finance Act and Section 402 of the Goods and Services Installment Sales Act.

Under Section 208 of the Home Improvement Finance Act, an assignee can achieve the status of holder in due course merely by giving the buyer 15 days notice. Similarly, under Section 402 of the Goods and Services Installment Sales Act, the assignee can achieve the status of a holder in due course merely by giving 45 days notice. If these sections are not repealed, the consumer will not be able to assert a claim against the assignee after the notice period has been compiled with. This is unfair to the consumer. He may discover a defect in the merchandise after the notice period has been complied with.

(Discussed in the body of the memo)

Section 18 (p25) line 29. Effective Date - 180 days from enactment.

180 days will give the business community ample time to make necessary preparations for compliance with this act (such as preparation of new or revised forms).