

By Mr. Aguiar of Swansea, petition of Antone S. Aguiar, Jr., for legislation to make certain changes in the law relative to the disclosure of consumer credit costs and terms. Banks and Banking.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Five.

AN ACT MAKING CERTAIN CHANGES IN THE LAW RELATIVE TO THE DISCLOSURE OF CONSUMER CREDIT COSTS AND TERMS.

1 *Whereas*, The deferred operation of this act would tend to
2 defeat its purpose, which is, in part, to provide forthwith that the
3 laws of the commonwealth relative to the disclosure of consumer
4 credit costs and terms continue to be in conformity with federal
5 law and regulatoins, therefore it is hereby declared to be an
6 emergency law necessary for the immediate perservation of the
7 public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 2 of chapter 140C is hereby amended by
2 inserting a new subsection (e): —

3 (e) Credit transactions primarily for agricultural purposes in
4 which the total amount to be financed exceeds twenty-five
5 thousand dollars.

1 SECTION 2. Section 3 of chapter 140C is hereby amended by
2 inserting a new subsection (i): —

3 (i) (1) Notwithstanding any other provision of this section, a
4 discount which a person offers, allows, or otherwise makes
5 available for the purpose of inducing payment for a purchase by
6 cash, check, or similar means rather than by use of an open end
7 credit card account, whether or not a credit card is physically
8 used, is not a finance charge, provided that:

9 (i) Such discount does not exceed five per cent when computed
10 or expressed as a percentage of the tag, posted, or advertised price
11 of the goods or services which are the subject of the transaction,

12 (ii) Such discount is available to all prospective buyers,

13 (iii) The availability of such discount is clearly and con-
14 spicuously disclosed to all prospective buyers by a sign or display
15 posted at or near each public entrance to the seller's place of
16 business wherein such discount is offered, and at all locations
17 within the place of business where a purchase may be made, and

18 (iv) If an offer of sale is advertised in any medium or if offers
19 to buy are invited or allowed by a seller to be made by mail,
20 telephone, or by means other than personal contact between the
21 customer and seller and if customers are allowed to pay by use of
22 a credit card or its underlying account and such fact is disclosed
23 by the advertisement, telephone contact, or in the course of the
24 mail correspondence, the availability of a discount for payments
25 in cash must be clearly and conspicuously disclosed in any
26 advertisement for such offerings and, in any case, before the
27 transaction has been completed by use of the credit card or its
28 underlying account.

29 (2) Notwithstanding anything contained in clause (i) to the
30 contrary, any surcharge added to the tag, posted, or otherwise
31 generally available price of goods or services offered for sale by a
32 seller, which is imposed by such seller as a condition or
33 consequence of the use of the credit card with respect to a
34 transaction involving such goods or services, shall be a finance
35 charge subject to the requirements of this section.

36 (3) With respect to any discount for cash in excess of five per
37 cent, the total amount of the discount shall constitute a finance
38 charge under subsection (a) to be disclosed in accordance with
39 subsection (d) of section six.

1 SECTION 3. Section 5 of chapter 140C is hereby amended by
2 inserting a new subsection (j): —

3 (j) The information required to be given under this chapter
4 shall include a full statement of closing costs to be incurred by the
5 customer, which shall be presented, in accordance with
6 regulations of the commissioner (1) prior to the time when any

7 down payment is made; or (2) in the case of a consumer credit
8 transaction involving real property, at the time the creditor
9 makes a commitment with respect to the transaction.

10 The commissioner may provide by regulation that any portion
11 of the information required to be disclosed by this subsection may
12 be given in the form of estimates where the provider of such
13 information is not in a position to know exact information.
14 Compliance with the provisions of the federal Real Estate
15 Settlement Procedures Act of 1974 (P.L. 93-533), regulations
16 issued thereunder and the use of the combined Uniform
17 Disclosure Settlement Statement form issued by the Secretary of
18 Housing and Urban Development, except to the extent of
19 inconsistency with the provisions of clause (3) of subsection (b),
20 clause (8) of subsection (c) and clause (3) of subsection (d), all of
21 section seven, shall be deemed compliance with the provisions of
22 this subsection.

1 SECTION 4. Clause (1) of subsection (a) of section 6 of
2 chapter 140C is hereby amended by inserting after the words
3 "incurring a finance charge" the following: — , except that the
4 creditor may, at his option and without disclosure, impose no
5 such finance charge if payment is received after the termination of
6 such time period;

1 SECTION 5. Clause (9) of subsection (b) of section 6 of
2 chapter 140C is hereby amended by inserting after the words
3 "finance charges" the following: — , except that the creditor may,
4 at his option and without disclosure, impose no such additional
5 finance charges if payment is received after such date or
6 termination of such period.

1 SECTION 6. Subsection (b) of section 6 of chapter 140C is
2 hereby amended by striking out clause (2) and inserting in place
3 thereof: — (2) The amount and date of each extension of credit
4 during the period and a brief identification on or accompanying
5 the statement of each extension of credit in a form sufficient to
6 enable the customer to identify the transaction or relate it to
7 copies of sales vouchers or similar instruments previously
8 furnished;

1 SECTION 7. Section 6 of chapter 140C is hereby further
2 amended by striking out subsection (d) and inserting in place
3 thereof the following: — Any creditor, other than the creditor of
4 the open end credit account, who imposes a finance charge not
5 excepted by subsection (i) of section three at the time of honoring
6 a customer's credit card, shall make the disclosures required
7 under item (2) of subsection (b) and under subsection (d), both of
8 section seven, at the time of that transaction, and the annual
9 percentage rate to be disclosed shall be determined by dividing
10 the amount of the finance charge by the amount financed and
11 multiplying the quotient (expressed as a percentage) by twelve.

1 SECTION 8. Subsection (g) of section 8 of chapter 140C is
2 hereby amended by inserting after clause (4) the following: — (5)
3 Any transaction in which an agency of the commonwealth is the
4 creditor.

1 SECTION 9. Section 8 of chapter 140C is hereby amended by
2 inserting after subsection (h) the following: —

3 (i) A customer's right to rescind a transaction pursuant to this
4 section shall expire three years after the date of consummation of
5 the transaction or upon the date that the customer transfers title
6 to the property, whichever occurs earlier, notwithstanding any
7 failure of the creditor to deliver to the customer the disclosures
8 required by this section or the other material disclosures required
9 by this chapter.

1 SECTION 10. Section 9 of chapter 140C is hereby amended
2 by inserting after subsection (e) the following: —

3 (f) Any advertisement to aid, promote, or assist directly or
4 indirectly an extension of consumer credit repayable by
5 agreement in more than four instalments shall, unless a specific
6 finance charge is or will be imposed, state clearly and
7 conspicuously: "THE COST OF CREDIT IS INCLUDED IN
8 THE PRICE QUOTED FOR THE GOODS AND SERVICES."

1 SECTION 11. Section 10 of chapter 140C is hereby amended

2 by striking out subsection (b) and inserting in place thereof: —

3 (b) Any creditor who fails in connection with any consumer
4 credit transaction to disclose to any person any information
5 required under this chapter or any rule or regulation made
6 thereunder by the commissioner to be disclosed to that person
7 shall be liable to that person in an amount equal to the sum of (1)
8 the actual damages sustained by such person as a result of the
9 failure; (2) (a) in the case of an individual action twice the amount
10 of the finance charge in connection with the transaction, except
11 that the liability under this clause shall not be less than one
12 hundred dollars nor more than one thousand dollars; or (b) in the
13 case of a class action, such amount as the court may allow, except
14 that as to each member of the class no minimum recovery shall be
15 applicable, and the total recovery in such action shall not be more
16 than the lesser of one hundred thousand dollars or one per centum
17 of the net worth of the creditor; and (3) in the case of any
18 successful action to enforce such liability, the costs of the action,
19 together with a reasonable attorney's fee as determined by the
20 court. In determining the amount of award in any class action,
21 the court shall consider, among other relevant factors, the
22 amount of any actual damages awarded, the frequency and
23 persistence of failures of compliance by the creditor, the resources
24 of the creditor, the number of persons adversely affected, and the
25 extent to which the creditor's failure of compliance was
26 intentional. A creditor may not be held liable in any action
27 brought under this subsection, if he shows by a preponderance of
28 evidence that such violation was not intentional and resulted
29 from a bona fide error in mathematical computation, or in the
30 layout or format, size of type or order of clauses contained in
31 such disclosure statement.

1 SECTION 12. Section 10 fo chapter 140C is hereby further
2 amended by inserting a new subsection (e): —

3 (e) No provision of this section imposing any liability shall
4 apply to any act done or omitted in good faith in conformity with
5 any rule, regulation, or interpretation thereof by the com-
6 missioner, notwithstanding that after such act or omission has

7 occurred, such rule, regulation or interpretation is amended,
8 rescinded, or determined by judicial or other authority to be
9 invalid for any reason.

1 SECTION 13. Section 10 of chapter 140C is hereby further
2 amended by inserting a new subsection (f):—

3 (f) The multiple failure to disclose to any person any
4 information required under this chapter to be disclosed in
5 connection with a single account under an open end consumer
6 credit plan, other single consumer credit sale, consumer loan, or
7 other extension of consumer credit, shall entitle the person to a
8 single recovery under this section but continued failure to disclose
9 after a recovery has been granted shall give rise to rights to
10 additional recoveries.

1 SECTION 14. Section 10 of chapter 140C is hereby further
2 amended by inserting a new subsection (g):—

3 (g) A person may not take any action to offset any amount for
4 which a creditor is potentially liable to such person under
5 subsection (b), clause (2) against any amount owing to such
6 creditor by such person, unless the amount of the creditor's
7 liability to such person has been determined by judgment of a
8 court of competent jurisdiction in an action to which such person
9 was a party.

1 SECTION 15. Section 10 of chapter 140C is hereby further
2 amended by inserting a new subsection (h):—

3 (h) Except as otherwise specifically provided in this chapter,
4 any civil action for a violation of this chapter which may be
5 brought against the original creditor in any credit transaction
6 may be maintained against any subsequent assignee of the
7 original creditor where the violation from which the alleged
8 liability arose in apparent on the face of the instrument assigned
9 unless the assignment is involuntary.

1 SECTION 16. Sections two and six of this act shall take effect
2 on October twenty-eight, nineteen hundred and seventy-five.

HOUSE OF REPRESENTATIVES

By Mr. [Name] of [State] -

The report of the [Committee] on [Subject] is hereby reported to the House of Representatives.

The [Subject]

In the [Year] [Month] [Day] [Session]

1. [Text]

2. [Text]

3. [Text]

4. [Text]

5. [Text]

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The first part of the paper is devoted to a general discussion of the theory of the subject, and to a consideration of the various methods of investigation which have been employed.

The second part of the paper is devoted to a detailed description of the apparatus used in the experiments, and to a description of the method of observation.

The results of the experiments are given in the third part of the paper, and are shown to be in good agreement with the theoretical predictions. The agreement is particularly good in the case of the first series of experiments, and is also good in the case of the second series of experiments.

The fourth part of the paper is devoted to a discussion of the results, and to a comparison of the results with the theoretical predictions.

The fifth part of the paper is devoted to a discussion of the errors in the experiments, and to a discussion of the accuracy of the results. It is shown that the results are accurate to within a few per cent, and that the errors are small compared with the magnitude of the results.

The sixth part of the paper is devoted to a discussion of the conclusions which can be drawn from the results.

The seventh part of the paper is devoted to a discussion of the applications of the results to other fields of research. It is shown that the results have important implications for the theory of the subject, and that they may be of use in other fields of research.

The eighth part of the paper is devoted to a discussion of the acknowledgments, and to a list of references.