31 Second Revision

AMENDMENT TO H.R. 4173
OFFERED BY MR. CONYERS OF MICHIGAN AND MR. GRAYSON OF FLORIDA

Page 880, after line 15, insert the following:

1 **SEC. 4507. CIVIL LIABILITY.**

2 (a) Except as otherwise provided in this section, any
3 covered person who fails to comply with any requirement
4 imposed under this chapter with respect to any consumer
5 is liable to such consumer in an amount equal to the sum
6 of—

7 (1)(A) in the case of an individual action, any
8 actual damage sustained by such consumer as a re-
9 sult of the failure;

10 (B)(i) in the case of an individual action, twice
11 the amount of any unlawful finance charge or fee in
12 connection with the transaction;

13 (ii) in the case of an individual action relating
14 to a lease of personal or real property, 25 percent
15 of the total amount of monthly payments under the
16 lease; or

17 (iii) in the case of any individual action for
18 which no cost is readily apparent, not less than
19 $2,000;

1 (C) any other specific performance or equitable
2 relief available, including rescission; and
3 (D) reasonable costs and attorneys fees;
4 (2) in the case of a class action, such amount
5 as the court may allow, except that as to each mem-
6 ber of the class no minimum recovery shall be appli-
7 cable. In determining the amount of award in any
8 class action, the court shall consider, among other
9 relevant factors, the amount of any actual damages
10 awarded, the frequency and persistence of failures of
11 compliance by the creditor, the resources of the cred-
12 itor, the number of persons adversely affected, and
13 the extent to which the creditor's failure of compli-
14 ance was intentional; and
15 (3) in the case of any successful action to en-
16 force the foregoing liability, the costs of the action,
17 together with a reasonable attorney's fee as deter-
18 mined by the court.
19 (b) A covered person has no liability under this sec-
20 tion for any failure to comply with any requirement im-
21 posed under this chapter, if within sixty days after discov-
22 ering an error, whether pursuant to a final written exam-
23 ination report or notice or order or through the covered
24 person's own procedures, and prior to the institution of
25 an action under this section or the receipt of written notice

1 of the error from the obligor, the covered person notifies
2 the consumer concerned of the error and makes whatever
3 adjustments in the appropriate account are necessary to
4 ensure that the consumer will not be required to pay an
5 amount in excess of the lawful amount.

6 (c) A covered person may not be held liable in any
7 action brought under this section for a violation of this
8 title if the covered person shows by a preponderance of
9 evidence that the violation was not intentional and re-
10 sulted from a bona fide error notwithstanding the mainte-
11 nance of procedures reasonably adopted to avoid any such
12 error. Examples of a bona fide error include, but are not
13 limited to, clerical, calculation, computer malfunction and
14 programming, and printing errors, except that an error
15 of legal judgment with respect to a consumer's obligations
16 under this title is not a bona fide error.

17 (d) Any action under this section may be brought in
18 any appropriate United States district court within 3
19 years from the date of the occurrence of the violation, or
20 3 years from the date on which the first regular payment
21 of principal is due under a loan, whichever is later. This
22 subsection does not bar a consumer from asserting a viola-
23 tion of this title in an action to collect the debt which was
24 brought more than 3 years from the date of the occurrence
25 of the violation as a matter of defense by recoupment or

1 set-off in such action, except as otherwise provided by
2 State law.
3 (e) A consumer may not take any action to offset any
4 amount for which a creditor or assignee is potentially lia-
5 ble to such person under subsection (a) against any
6 amount owed by such consumer, unless the amount of the
7 covered person's liability under this title has been deter-
8 mined by judgment of a court of competent jurisdiction
9 in an action of which such consumer was a party. This
10 subsection does not bar a consumer then in default on the
11 obligation from asserting a violation of this title as an
12 original action, or as a defense or counterclaim to an ac-
13 tion to collect amounts owed by the consumer brought by
14 a covered person liable under this title.

Strike section 4508 (relating to no private right of action).

Page 880, line 16, strike "**4507**" and insert "**4508**".