

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 21, 1985

The tenth meeting of the Senate Judiciary Committee was called to order at 10:05 a.m. on January 21, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present, with the exception of Senator Daniels, who was excused.

CONSIDERATION OF SB 66: Senator Mike Halligan, sponsor of SB 66, stated he submitted this proposition last session, but because of the press of the transmittal deadline, the committee elected to table it. This bill requires plain language in consumer contracts. It is an outgrowth of the nationwide concern or push for comprehensible language in contracts. It is premised on the common law principle that contract provisions not having been understood by the parties when entered into are void. Senator Halligan noted the bill does not address business-to-business contracts, just consumer contracts. Page 3, section 4, excludes some areas from plain language requirements. Senator Halligan indicated the committee should look at this section and determine whether it should include state governmental agencies. Section 6 goes on to limit the remedies of a consumer. There is a built-in statute of limitations--when your contract has been performed, your time to sue is up. Page 5, section 7, states the remedies are cumulative. In order to allow businesses to comply with this act, the applicability date proposed is January 1, 1986.

PROPOSERS: Scott J. Burnham, associate professor at the University of Montana School of Law, testified in support of SB 66. Professor Burnham stated his testimony represented his own views and not the views of the School of Law. He stated it is important that a contract be understood during performance and not just at the beginning. Professor Burnham provided the committee with written testimony in support of his position (see Exhibit 1). He stated that when a business goes through the process of translating an agreement to make it plain language, it often improves the substance of the agreement. He believes that when contracts are translated into plain language, there is a change in substance which benefits the consumer as well as a change in style. Sometimes courts will look on agreements favorably when they have attempted to draft them in language consumers can understand. Professor Burnham expressed some concerns he has with the bill (see page 2 of Exhibit 1). Professor Burnham stated he thinks the act is a thoughtful

one that balances the needs of the consumer with the needs of the businesses. George Bousliman, representing the State Bar of Montana, appeared in support of SB 66. He stated they support this bill in terms of the concept and the content. They think it is a good faith effort to take some of the mystery out of contracts, which should make it easier for all parties to understand their rights and obligations. Mr. Bousliman echoed what was said about section 3(2); he feels the bill should stop after saying contracts should be written in plain language. Julie A. DalSoglio, representing the Montana Public Interest Research Group, appeared in support of SB 66 (see written testimony attached as Exhibit 2). Sam Ryan, of the Montana Low Income Coalition, stated the coalition is in favor of the plain language bill. He stated no one should be faced with any document that requires the services of a lawyer (see witness sheet attached as Exhibit 3). Molly Munro, Executive Secretary of the Montana Association of Homes for the Aging, stated they fully support this bill and urge the committee pass it (see witness sheet attached as Exhibit 4). Louise Kunz, representing the Montana Low Income Coalition, stated they support this bill (see witness sheet attached as Exhibit 5). Tom Ryan, of the Montana Senior Citizens Association, submitted written testimony in support of SB 66 (see Exhibit 6). Jim Hughes, representing Mountain Bell, stated they don't oppose the concept and intent of this bill, but offered the following amendment:

Page 3, line 16.
Following: 33-15-329;
Delete: "or"

Page 3, line 18.
Following: "instrumentality"
Insert: "; or

(e) the provision of public utility service under tariffs
approved by the public service commission"

(See witness sheet and amendment attached as Exhibit 7.) Mike Rice, of Transystems, Inc., appeared in support of SB 66 (see exhibit 8). Mr. Rice stated he shares the same concerns as Mr. Hughes, although he has a more compelling concern, and that is the description of bad faith. He suggested an amendment that would limit the remedies or make those the full remedies under the law. Neil Haight, on behalf of the Montana Legal Services Association, testified in support of SB 66 (see Exhibit 9). Wade Wilkinson, on behalf of the Low Income Senior Citizens Advocates, stated they would like to offer another perspective on this. Through his education, he has learned to speak in not so plain language. They advocate trying to find straight forward ways to say things. Paul Carpino, of the Montana Low Income Coalition, testified in support of

this bill and stated what we are dealing with is the concept of control of information. If you control the information, you maintain power. He believes information is often given in a way that keeps people powerless. One way that affects low income people is it is given to them in a form that is too late, and when it is too late, it is no good for them. Another important way information or power is kept from people is when it is given to them in a form which they can't understand. Tanya Ask, from the Montana Insurance Department, spoke merely to clarify some of the points of the bill. She explained that easy to read language is already required for life and disability contracts in the state. Easy to read language in life and health insurance contracts is already part of the codes. (See witness sheet and proposed amendment attached as Exhibit 10.)

OPPONENTS: Jeffry M. Kirkland, Vice President of Governmental Relations for the Montana Credit Unions League, stated they support and have supported the concept of plain English consumer contracts, but have some concerns with this bill (see Exhibit 11). George Bennett, counsel for the Montana Bankers Association, testified in opposition to the bill (see witness sheet attached as Exhibit 12). They feel like the credit unions. They are in favor of the careful and simple use of English language, but this bill presents problems for all financial institutions and principal banks. There is no objective standard. Section 3 attempts in vague terms to define plain language. They wonder if there is a problem and would this bill really address those problems in relationship to banks. They oppose the bill as it may be applied to banks. Les Alke appeared in opposition to the bill on behalf of the Montana Bankers Association. In January 1985, he conferred with Mr. Wines of the Department of Commerce, who could recall no instances of consumer complaints about understanding consumer contracts. Some complained about terms they had not read before signing it, but they understood them after they read the contract fully. In no instances did he receive a complaint dealing with unintelligible language in a contract. Banks and other financial institutions have many forms they use. If these forms are subject to change, it will be a horrible onus for these financial institutions to comply with. These costs could affect the retailers. Their intern surveyed other states and found a Catch 22 in Maine. Maine has a plain language law. He believes we are using a cannon to shoot a mosquito. (See witness sheet attached as Exhibit 13.) Terrence D. Carmody, on behalf of the Montana Association of Realtors, appeared in support of the concept of this bill. The evolution of forms his industry used have been developed over the years by law. They would like to have some means of getting these documents approved before they are used so they won't have to go through 25 years of litigation. (See witness sheet attached as Exhibit 14.) Riley Johnson, on behalf of the National Federation of Independent Business, reiterated concerns about punitive damages. He also believes there is a lack of definition of

terms. They want plain language, but feel the lack of definition of terms automatically forces them to go into court. He is more concerned with the legal language and perceived problem and doesn't believe we really have a need for this bill at this time. (See witness sheet attached as Exhibit 15.)

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault asked Mr. Alke if a compliance time in the bill would be helpful to them in getting the forms together. Mr. Alke responded that is not the concern of the financial institutions. Their concern is new court decisions that come out requiring new language. Senator Blaylock asked Mr. Carmody if the sample sentences contained language the courts are imposing on us. Mr. Carmody responded yes. He explained that when they lost a particular case, they contract with an attorney to redraft the wording in the contract accordingly. Senator Towe told Senator Halligan that on page 1, line 25, the word "primarily" bothered him. Senator Halligan stated the language defining federal contracts was taken from the Federal Trade Commission as well as our own consumer act. There is case law outlining that. Senator Towe asked how Senator Halligan interpreted Professor Burnham's suggestion to strike the plain language definition altogether and just use the term "plain language." Senator Halligan stated in his 1983 bill, he used the New York law to which he is referring now; he would have no problem in adopting that language. The only reason he provided it this session is he was trying to address all of the problems from last session. In his 1983 bill, he had the option of going with the Flesch test or the New York law. The Flesch test is the objective standard. Senator Towe asked about the constant litigation of what these things mean. Senator Halligan does envision this as a problem, but New York has not experienced extensive litigation. He believes litigation may not help the first person that is hurt, but it will help along the line. Senator Towe asked how technical terms, such as arbitration, are to be defined in everyday words. Senator Halligan stated those terms are dealt with in the code. Senator Crippen asked Mr. Bennett if Mr. Carmody's suggestion that contracts be pre-approved by an agency of the state government (such as the Department of Commerce) would help his problem by giving him some input as to what is an objective standard. Mr. Bennett responded yes; that would be extremely helpful. The plain language bill in last session was SB 261. There was a recommendation at that time that some state agency set up procedures for reviewing consumer contracts. That was essentially the point he was trying to make. Senator Pinsoneault asked Professor Burnham if the law school could take a lead in this and come up with some forms to be receptive to the public's needs. Professor Burnham stated he would not like the state to have to bear that expense. Senator Pinsoneault asked if conceptually a person who can't hire an attorney could go to the Montana Bar or the Law School and present his particular problem to him and they could be responsive to his need, since the people who have the

problem don't have the money to hire an attorney. Professor Burnham responded he was not sure. He thinks they might be infringing on free enterprise. Senator Mazurek explained to Professor Burnham he had some concern over the growing litigation in the bad faith area. Professor Burnham stated he had not anticipated that. He didn't believe anyone had gone that far as to the definition of bad faith. He believes that could be built into the bill and stated tThere is no intention to have an action for bad faith brought under this bill. Senator Mazurek was concerned with the landlord-tenant area in particular. If an attorney for the landlord drafts a release which incorporates language from the model act which language may not be in plain English, that landlord-tenant agreement would violate this act. But to make sure your lease would not run afoul of that act, you would want to use it. Professor Burnham stated you would have to translate that statute into plain English to use it. Senator Crippen addressed a question to Professor Burnham to follow up on his statement to Senator Pinsoneault about the possibility of having a state agency as the arbitrator. He doesn't particularly like the idea of a state agency getting involved. He does believe they will probably settle out of court simply because of the cost, and then you really haven't accomplished anything at that time. He wondered if that would be more expensive in terms of cost. Professor Burnham said it is a question of balancing considerations. We have here light penalties. Even for a light penalty, they would pay rather than fight it. The experience of other states is they have not had an increase in litigation. Senator Crippen stated the definitions should be done in the statutes and should not be left up to the judicial system. Professor Burnham said we should have the subjective standard so we may promote business's using standard forms as every state may say the print size might be different. Senator Towe asked Professor Burnham if he would agree it appears the logical solution to this problem may well lie in the Law School's hands, as they should instill these type of objectives in their students. Professor Burnham stated he couldn't agree with him more about the burden's being on attorneys and law schools. He did emphasize there is an exclusion for a consumer represented by an attorney at the time of the action.

CLOSING STATEMENT: Senator Halligan stated he would like to address the issues brought up by the opponents. Was there a problem? If we did everything in the legislature because there had been a clamour from the people, we would have a problem. We try to anticipate the problems. As to the subjective nature of section 3--again, he has no problem with some sort of optional Flesch test. Senator Halligan passed out what he believes is an excellent consumer contract (see Exhibit 16). He believes the good faith defense will stop the frivolous lawsuits to perhaps a trickle. He had suggested the state agency in last session's bill, but the expense to the state would be tremendous. Because there are thousands of consumer contracts entered into on a daily basis, there is

no reason to perpetuate the plain language that should have been in a long time ago. As Mr. Bousliman indicated, this bill balances the needs of the consumers with the needs of the business people.

Hearing on SB 66 was closed. Chairman Mazurek turned the chair over to Senator Blaylock as he was one of the sponsors of the next two bills to be heard. Acting Chairman Blaylock then stated both SB 63 and SB 110 would be heard together, as their subject matter was similar.

CONSIDERATION OF SB 63 AND SB 110: Senator Halligan, sponsor of SB 63, stated the best way to describe this bill is to look at the title and read it. The purpose of the bill is to allow the option of arbitration to the parties. It is less costly and less time consuming. Also, the decision making process or dispute resolution of problems takes place in a more familiar place than litigation.

Senator Mazurek, sponsor of SB 110, stated the bill's purpose was to adopt the provisions of the Uniform Arbitration Act. Even though Montana has arbitration statutes on the books, there is existing case law and statutes in Montana which prohibit parties from agreeing in advance of a dispute to submitting it to arbitration. What this bill would do is allow parties in advance of any dispute arising agreeing to submit a dispute to arbitration and adopts the Uniform Arbitration Act which establishes the procedures under which an arbitration would occur and provides the means for enforcement of awards. The reasons for proposing the uniform act are it modernizes our current statutes and would bring Montana in line with the other states having the act. Montana and six other states do not have the uniform act in place. There is an effort to encourage states to get more involved in arbitration. It would take those matters of the parties outside the context of the court to allow them to be arbitrated. It is hoped that by allowing arbitration, we would have an impact on the current clogging of the courts. This bill would help get some of those matters out of those courts. It is a practice in this state already. This bill would allow either side of a dispute to enforce the arbitration proceedings. The bill is fairly broad. His principal concern is making the commercial setting where the parties are already arbitrating enforceable. He thinks arbitration is helpful in many settings; it is a less expensive, less cumbersome means of settling.

PROPOSERS: William Corbett, Professor of Law at the University of Montana Law School and an arbitrator, appeared in support of the bill. (See witness sheet and written testimony attached as Exhibit 17.) He stated his views are his own personal views and do not reflect those of the University of Montana Law School or the University of Montana school system. Arbitration means that instead of taking up the courts time, we are asking a private third party to resolve the dispute. Both bills

attempt to resolve the future dispute. If there are some that shouldn't be going to arbitration, then exemptions should be written into the bill. The rule shouldn't be modeled after those few cases that shouldn't be handled by arbitrators. Charles Sande, of Billings, appeared in support of this bill. Judge Sande stated we have a great responsibility to make our legal system work. Today, we have a chance to examine something that might make our system a little bit better. To date, 44 states have adopted the Uniform Arbitration Act. He believes this is something that would be good for the state. We are not in a completely new field. Montana, North Dakota, Vermont, and three southern states are the only ones that haven't adopted the act. The objections that may be raised here have been raised in other states. These things have been considered. This is legislation whereby we would have another tool. It is completely voluntary. Cases take a long time to get to court. Once you get a decision from the district court, it may be appealed to the supreme court. By using arbitration, you avoid all of this pleading. Once you hear the arbitrators, you don't go to the supreme court, except in rare cases. You cannot appeal an award on the substance of the award. Arbitration also avoids publicity. This bill is not something that forces people to use arbitration. They would have to agree to do it. William Jensen, general counsel for Blue Cross of Montana, stated they are in favor of these bills. If the committee were to go to SB 63, they may want to amend 27-4-112. The Uniform Arbitration Act would allow them to negotiate with their groups, and they would be able to reduce the costs to their subscribers. (See witness sheet attached as Exhibit 18.) Scott J. Burnham, associate professor at the University of Montana Law School, appeared in support of this bill on his own behalf and not on behalf of the Law School. He stated we are only talking about arbitration where the parties have agreed to it, so the present law takes away a freedom of the parties, a freedom to contract. The courts are no longer jealous of jurisdiction. Professor Burnham anticipated objections to this bill about contracts that are not freely agreed to and whether that kind of arbitration clause should be enforced. He agreed with Judge Sande--we should not have exceptions. (See witness sheet and written testimony attached as Exhibit 19.) Karl Englund, of the Montana Trial Lawyers Association, stated that as lawyers, they were not afraid of this bill or that it will hurt their business, although they are concerned about contracts of adhesion. They have written alternative suggestions of amendment (see Exhibit 20). Terrence D. Carmody, on behalf of the Montana Association of Realtors, stated they support the bill (see witness sheet attached as Exhibit 21). Bill Olson, Secretary-Treasurer of the Montana Contractors Association, rose in support of the bills. He questioned how Section 6, page 4, works with regard to labor agreements. John Alke appeared on behalf of the Montana Physicians Service in support of the bills and stated he was available to answer any questions about the bill with regard to health insurance. (See also the witness sheet completed by Riley Johnson in

support of SB 110 attached as Exhibit 22.) (See witness sheet completed by Mike Rice, on behalf of Transystems, Inc., in support of SB 63 attached as Exhibit 23.) (See correspondence from Kenneth D. Bryson, of the Montana Arbitrators Association, in support of SB 110 attached as Exhibit 24.)

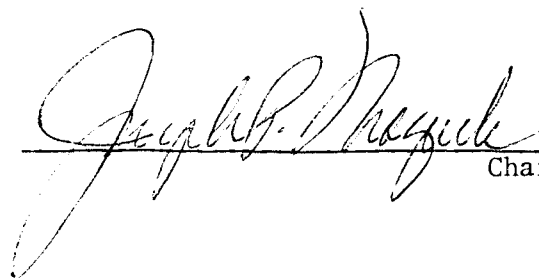
OPPONENTS: None.

CLOSING STATEMENT: None.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock requested that Senator Mazurek respond to Mr. Olson's question. Senator Mazurek stated he didn't have an answer at this point, but believes the question needs to be looked into by the staff attorney, Mr. Petesch. Senator Towe addressed a question to Professor Burnham and Mr. Corbett. He then related an example of Nannabelle Nickleberry, an elderly lady agreeing in a home improvement contract to arbitrate a dispute in New York. Senator Mazurek responded that Senator Towe was raising a good example and we need to prepare an amendment to address that situation; it should be excepted out, as we need to get those situations out from the coverage of this act. Senator Towe asked even if we adopt the Montana Trial Lawyers Associations' amendments, will that do that. Senator Mazurek responded he would work with Senator Towe to address that situation.

Hearing on SB 63 and SB 110 was closed.

There being no further business to come before the committee, the meeting was adjourned at 12:20 p.m.


Chairman

COMMITTEE ON

DATE

January 21, 1985

Judiciary

SB 63, 66 & 110

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Sam Ryan	Mont. Low Income Coalition	66	X	
GEORGE BOUSLIMAN	STATE BAR OF MONTANA	SB 66	X	
Bill Corbett	My Self	63, 110	X	
SCOTT T. BURNHAM	SELF	66, 63, 110	X	
Louise Kung	MT Low Income Coalition	66	X	
Mike Rice	Transp. Serv. Inc	66	answered	
"	"	63	X	
Bill Jase	Blue Cross of Mont	63 + 110		
Steve Brown	" " "	63 + 110	X	
Terry Jernigan	Blue Cross of Mont	66 + 110		
Julie Dabloglio	Mont. PIKG	66	X	
Frank	Mont. Bkers. Assn	66		X
Jeff Kirkland	Montana Credit Unions League	66		✓
KAZL ENGLAND	MT. TRIAL LAWYERS	63/110	✓	
Gary Ann	MT Ins Dept	110		
George Allen	MT. Retail Assn	66		X
Nelly Mearns	Mont. Assn Home-possessing	66	✓	
Bill Olson	MT. Contractors	110	✓	
Paul Jernigan	MT Low Income Coalition	66	✓	
Neil Haight	MT. Legal Services	66	✓	
James R. Hight	MTA. BCE	66	Answered	
EARL REILLY	MONT. SENIOR CITIZENS ASSN	66	✓	
Rdy Johnson	NFIB & Mont. Amelioration	66 + 110	X	X
Ken Drake	American Smokers' Assn	66 + 110	X	
James J. Hanning	Mont. Auto Dealers Assn	63 + 110	X	

(Please leave prepared statement with Secretary)

(This sheet to be used by those testifying on a bill.)

NAME: SCOTT J. BURNHAM DATE: 1/21/85

ADDRESS: UNIVERSITY OF MONTANA SCHOOL OF LAW, MISSOULA MT 59812

PHONE: 243-6603

REPRESENTING WHOM? SELF

APPEARING ON WHICH PROPOSAL: 66

DO YOU: SUPPORT? ☒ AMEND? ☒ OPPOSE? ☐

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 012185
BILL NO. SB 66

Re: SB 66

Scott J. Burnham
Associate Professor of Law
University of Montana School of Law

Personal Background

I teach Contract Law, Legal Drafting, and Consumer Law. In all of these courses, I am concerned with the parties' ability to read and understand the contracts they enter.

Position

1. Contracts should be written in plain language. This means they should be:

- written in language that is easy to understand;
- organized in a form that is easy to follow.

2. The law should not:

- be onerous for businesses to comply with;
- contain harsh penalties for violations.

Argument

Writing is communication. But many contract drafters have forgotten this, for most contracts are unreadable.

For consumers, this means that they do not know what they are getting into. They can't read it, and if they can read it, they can't understand it. But contract law says they are bound by it.

Consumers have become sophisticated at comparative shopping on the basis of price and other qualities of goods. They cannot comparative shop for contracts unless they can read them.

Plain language is important not only when contracts are entered, but during their performance. A contract should not be signed and filed away but should be accessible. Have you ever wondered about your insurance coverage, for example, and tried to find the answer in the contract? This is why a form that is easy to follow is as important as the language.

We often think that consumers are the only ones benefitted by plain language. This is not true. People who draft contracts or buy the forms don't understand them most of the time either. Writing in plain language forces them to think about what they are saying. Experience has shown that when a business rewrites its form in plain language, it revises for substance as well as for style.

An excellent example is the attached Citibank loan agreement. The default provision has been made readable and accessible. But the number of events that constitute default has also been reduced. Much of the old substance was found to be unnecessary. Businesses have found that use of plain language contracts creates good public relations. And courts are more likely to enforce a provision that has been expressed in such a way that it is meaningful to the consumer.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 012185
SB 66

The remedies under the proposed bill seem well-balanced to encourage compliance without doing substantial harm to businesses that violate the law. It is limited to consumer contracts. The contract is still legal even if it violates the law. A good-faith attempt at compliance is a defense, as is the presence of counsel for the consumer. The penalty is only \$50 for a violation and is limited to \$10,000 for a class action. Attorneys' fees are awarded, which may give a consumer who could not otherwise bring the claim an opportunity to be heard.

Technical Considerations

Section 3 (2). This extensive enumeration is probably unnecessary. Language which is purposely general would do the job.

Section 4 (1). Many agreements are not signed; for example, insurance contracts and warranties. It would be better to refer to agreements that are "entered into" rather than signed.

Section 4 (2) (a). The \$50,000 limit should be deleted. It has the effect of excluding most real estate transactions. This is an area where parties often enter unreadable agreements without the assistance of a lawyer. An excellent example is the attached Standard Form Listing Contract.

One of my concerns is the ability of drafters of contracts to put illegal provisions in contracts with impunity. The provision is against the law, but the consequence of including it is simply that it is unenforceable. A consumer may give up a right when the provision is brought to his or her attention. Ironically, the fact that the contract is written in plain language may encourage drafters to get away with this behavior. I would like to see this language in the law:

A consumer contract which contains a provision in which the consumer purports to waive rights which a statute, regulation, or decision of the Supreme Court of this state says cannot be waived is in violation of this act.

Conclusion

Plain language laws have been adopted in a number of states. They are most effective when they require general standards and are easy to comply with.

The proposed bill is a well-balanced one, but would be strengthened by a provision prohibiting illegal clauses in contracts.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 01/21/85
BILL NO. SB 66

"OLD" CITIBANK CONSUMER LOAN NOTE

FRONT SIDE

PM 448 REV 9-76

FIRST NATIONAL CITY BANK

PERSONAL FINANCE DEPARTMENT - NEW YORK

APPLICATION
NUMBER

ANNUAL PER-
CENTAGE RATE

PROCEEDS TO BORROWER

PROPERTY INS. PREMIUM

FILING FEE

AMOUNT FINANCED (1) + (2) + (3)

PREPAID FINANCE CHARGE

GROUP CREDIT LIFE INS. PREMIUM

FINANCE CHARGE (5) + (6)

(1) \$

(2) \$

(3) \$

(4) \$

(5) \$

(6) \$

(7) \$

TOTAL OF PAYMENTS (4) + (7)

FOR VALUE RECEIVED, the undersigned (jointly and severally) hereby promises to pay to FIRST NATIONAL CITY BANK (the "Bank") at its office at 308 Park Avenue, New York, New York 10022 (i) THE SUM OF

() IN _____ EQUAL CONSECUTIVE MONTHLY INSTALLMENTS OF \$ _____ EACH ON THE SAME DAY OF EACH MONTH, COMMENCING _____ DAYS FROM THE DATE THE LOAN IS MADE; OR () IN _____ EQUAL CONSECUTIVE WEEKLY INSTALLMENTS OF \$ _____ EACH ON THE SAME DAY OF EACH WEEK, COMMENCING NOT EARLIER THAN 5 DAYS NOR LATER THAN 45 DAYS FROM THE DATE THE LOAN IS MADE; OR () IN _____ EQUAL CONSECUTIVE BI-WEEKLY INSTALLMENTS OF \$ _____ EACH, COMMENCING NOT EARLIER THAN 10 DAYS NOR LATER THAN 45 DAYS FROM THE DATE THE LOAN IS MADE, AND ON THE SAME DAY OF EACH SECOND WEEK THEREAFTER; OR () IN _____ EQUAL CONSECUTIVE SEMI-MONTHLY INSTALLMENTS OF \$ _____ EACH, COMMENCING NOT EARLIER THAN 10 DAYS NOR LATER THAN 45 DAYS FROM THE DATE THE LOAN IS MADE, AND ON THE SAME DAY OF EACH SEMI-MONTHLY PERIOD THEREAFTER; (ii) A FINE COMPUTED AT THE RATE OF \$4 PER \$1 ON ANY INSTALLMENT WHICH HAS BECOME DUE AND REMAINED UNPAID FOR A PERIOD IN EXCESS OF 10 DAYS, PROVIDED (a) IF THE PROCEEDS TO THE BORROWER ARE \$10.00 OR LESS, NO SUCH FINE SHALL EXCEED \$5 AND THE AGGREGATE OF ALL SUCH FINES SHALL NOT EXCEED THE LESSER OF 2% OF THE AMOUNT OF THIS NOTE OR \$25, OR (b) IF THE ANNUAL PERCENTAGE RATE STATED ABOVE IS 7.50% OR LESS, THE LIMITATIONS PROVIDED IN (a) SHALL NOT APPLY AND NO SUCH FINE SHALL EXCEED \$25 AND THE AGGREGATE OF ALL SUCH FINES SHALL NOT EXCEED 2% OF THE AMOUNT OF THIS NOTE, AND SUCH FINES SHALL BE DEEMED LIQUIDATED DAMAGES OCCASIONED BY THE LATE PAYMENT(S); (iii) IN THE EVENT OF THIS NOTE MATURING, SUBJECT TO AN ALLOWANCE FOR UNEARNED INTEREST ATTRIBUTABLE TO THE MATURED AMOUNT, INTEREST AT A RATE EQUAL TO 1% PER MONTH; AND (iv) IF

THIS NOTE IS REFERRED TO AN ATTORNEY FOR COLLECTION, A SUM EQUAL TO ALL COSTS AND EXPENSES THEREOF, INCLUDING AN ATTORNEY'S FEE EQUAL TO 15% OF THE AMOUNT OWING ON THIS NOTE AT THE TIME OF SUCH REFERENCE, FOR NECESSARY COURT COSTS. THE ACCEPTANCE BY THE BANK OF ANY PAYMENT(S) EVEN IF MARKED PAYMENT IN FULL OR SIMILAR WORDING, OR IF MADE AFTER ANY DEFAULT HEREUNDER, SHALL NOT OPERATE TO EXTEND THE TIME OF PAYMENT OF OR TO WAIVE ANY AMOUNTS THEN REMAINING UNPAID OR CONSTITUTE A WAIVER OF ANY RIGHTS OF THE BANK HEREUNDER.

IN THE EVENT THIS NOTE IS PREPAID IN FULL OR REFINANCED, THE BORROWER SHALL RECEIVE A REFUND OF THE UNEARNED PORTION OF THE PREPAID FINANCE CHARGE COMPUTED IN ACCORDANCE WITH THE RULE OF 78 (THE "SUM OF THE DIGITS" METHOD), PROVIDED THAT THE BANK MAY RETAIN A MINIMUM FINANCE CHARGE OF \$10, WHETHER OR NOT EARNED, AND, EXCEPT IN THE CASE OF A REFINANCING, NO REFUND SHALL BE MADE IF IT AMOUNTS TO LESS THAN \$1. IN ADDITION, UPON ANY SUCH PREPAYMENT OR REFINANCING, THE BORROWER SHALL RECEIVE A REFUND OF THE CHARGE, IF ANY, FOR GROUP CREDIT LIFE INSURANCE INCLUDED IN THE LOAN EQUAL TO THE UNEARNED PORTION OF THE PREMIUM PAID OR PAYABLE BY THE HOLDER OF THE OBLIGATION (COMPUTED IN ACCORDANCE WITH THE RULE OF 78), PROVIDED THAT NO REFUND SHALL BE MADE OF AMOUNTS LESS THAN \$1.

AS COLLATERAL SECURITY FOR THE PAYMENT OF THE INDEBTEDNESS OF THE UNDERSIGNED HEREUNDER AND ALL OTHER INDEBTEDNESSES OR LIABILITIES OF THE UNDERSIGNED TO THE BANK, WHETHER JOINT, SEVERAL, ABSOLUTE, CONTINGENT, SECURED, UNSECURED, MATURED OR UNMATURED, UNDER ANY PRESENT OR FUTURE NOTE OR CONTRACT OR AGREEMENT WITH THE BANK (ALL SUCH INDEBTEDNESSES AND LIABILITIES BEING HEREINAFTER COLLECTIVELY CALLED THE "OBLIGATIONS"), THE BANK SHALL HAVE, AND IS HEREBY GRANTED, A SECURITY INTEREST AND/OR RIGHT OF SET-OFF IN AND TO (a) ALL MONIES, SECURITIES AND OTHER PROPERTY OF THE UNDERSIGNED NOW OR HEREAFTER ON DEPOSIT WITH OR OTHERWISE HELD BY OR COMING TO THE POSSESSION OR UNDER THE CONTROL OF THE BANK, WHETHER HELD FOR SAFEKEEPING, COLLECTION, TRANSMISSION OR OTHERWISE OR AS CUSTODIAN, INCLUDING THE PROCEEDS THEREOF, AND ANY AND ALL CLAIMS OF THE UNDERSIGNED AGAINST THE BANK, WHETHER NOW OR HEREAFTER EXISTING, AND (b) THE FOLLOWING DESCRIBED PERSONAL PROPERTY (ALL SUCH MONIES, SECURITIES, PROPERTY, PROCEEDS, CLAIMS AND PERSONAL PROPERTY BEING HEREINAFTER COLLECTIVELY CALLED THE "COLLATERAL"): () Motor Vehicle () Boat () Stocks () Bonds () Savings, and/or

SEE CUSTOMER'S COPY OF SECURITY AGREEMENT(S) OR COLLATERAL RECEIPT(S) RELATIVE TO THIS LOAN FOR FULL DESCRIPTION. IF THIS NOTE IS SECURED BY A MOTOR VEHICLE, BOAT OR AIRCRAFT, PROPERTY INSURANCE ON THE COLLATERAL IS REQUIRED, AND THE BORROWER MAY OBTAIN THE SAME THROUGH A PERSON OF HIS OWN CHOICE.

IF THIS NOTE IS NOT FULLY SECURED BY THE COLLATERAL SPECIFIED ABOVE, AS FURTHER SECURITY FOR THE PAYMENT OF THIS NOTE, THE BANK HAS TAKEN AN ASSIGNMENT OF 10% OF THE UNDERSIGNED BORROWER'S WAGES IN ACCORDANCE WITH THE WAGE ASSIGNMENT ATTACHED TO THIS NOTE.

In the event of default in the payment of this or any other obligation or the performance or observance of any term or covenant contained herein or in any note or other contract or agreement evidencing or relating to any obligation or any collateral on the Borrower's part to be performed or observed; or the undersigned Borrower shall die; or any of the undersigned become insolvent or make an assignment for the benefit of creditors; or a petition shall be filed by or against any of the undersigned under any provision of the Bankruptcy Act; or any money, securities or property of the undersigned now or hereafter on deposit with or in the possession or under the control of the Bank shall be attached or become subject to distraint proceedings or any order or process of any court; or the Bank shall deem itself to be insecure, then and in any such event, the Bank shall have the right (at its option), without demand or notice of any kind, to declare all or any part of the Obligations to be immediately due and payable, whereupon such Obligations shall become and be immediately due and payable, and the Bank shall have the right to exercise all the rights and remedies available to a secured party upon default under the Uniform Commercial Code (the "Code") in effect in New York at the time, and such other rights and remedies as may otherwise be provided by law. Each of the undersigned agrees (for purposes of the "Code") that written notice of any proposed sale of, or of the Bank's election to retain, Collateral mailed to the Undersigned Borrower (who is hereby appointed agent of each of the undersigned for such purpose) by first class mail, postage prepaid, at the address of the undersigned Borrower indicated below three business days prior to such sale or election shall be deemed reasonable notification thereof. The remedies of the Bank hereunder are cumulative and may be exercised concurrently or separately. If any provision of this paragraph shall conflict with any remedial provision contained in any security agreement or collateral receipt covering any Collateral, the provisions of such security agreement or collateral receipt shall control.

Acceptance by the Bank of payments in arrears shall not constitute a waiver of or otherwise affect any acceleration of payment hereunder or other right or remedy exercisable hereunder. No failure or delay on the part of the Bank in exercising, and no failure to file or otherwise perfect or enforce the Bank's security interest in or with respect to any Collateral, shall operate as a waiver of any right or remedy hereunder or release any of the undersigned, and the Obligations of the undersigned may be extended or waived by the Bank, any contract or other agreement evidencing or relating to any obligation or any Collateral may be amended and any Collateral exchanged, surrendered or otherwise dealt with in accordance with any agreement relative thereto, all without affecting the liability of any of the undersigned. In any litigation (whether or not arising out of or relating to any obligation or collateral or other matter connected herewith) in which the Bank and any of the undersigned may be adverse parties, the Bank and each such undersigned hereby waives their respective right to demand trial by jury and, additionally, each such undersigned waives his right to interpose in any such litigation any counterclaim of any nature or description which he may have against the Bank. In addition, the Bank shall not be deemed to have obtained knowledge of any fact or notice with respect to any matter relating to this note or any Collateral unless contained in a written notice mailed, postage prepaid, or personally delivered to the Personal Finance Department of the Bank at its address set forth above. Each of the undersigned, by his signature hereto, hereby waives presentation for payment, demand, notice of non-payment, protest and notice of protest with respect to the indebtedness evidenced by this note, and each such undersigned hereby agrees that this note shall be deemed to have been made under and shall be construed in accordance with the laws of the State of New York.

Each of the undersigned hereby authorizes the Bank to date this note as of the day the loan evidenced hereby is made, to correct patent errors herein and, at its option, to cause the signatures of one or more co-makers to be added without notice to any prior obligor.

RECEIPT OF A COPY OF THIS NOTE, APPROPRIATELY FILLED IN, IS HEREBY ACKNOWLEDGED BY THE BORROWER

FULL SIGNATURE

COMPLETE ADDRESSES

BORROWER

WIFE OR HUSBAND
OF BORROWER AS
CO-MAKER

CO-MAKER

CO-MAKER

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE

01/21/85

FILE NO.

5B 66

REVISED CITIBANK CONSUMER LOAN NOTE

Consumer Loan Note

Consumer Loan Note

Date _____, 19____

(In this note, the words I, me, mine and my mean each and all of those who signed it. The words you, your and yours mean First National City Bank.)

Terms of Repayment To repay my loan, I promise to pay you _____ Dollars (\$ _____). I'll pay this sum at one of your branches in _____ uninterrupted installments of \$ _____ each. Payments will be due _____, starting from the date the loan is made.

Here's the breakdown of my payments:

- | | | |
|-------------------------------------|----------|----------|
| 1. Amount of the Loan | \$ _____ | |
| 2. Property Insurance Premium | \$ _____ | |
| 3. Filing Fee for Security Interest | \$ _____ | |
| 4. Amount Financed (1+2+3) | | \$ _____ |
| 5. Finance Charge | | \$ _____ |
| 6. Total of Payments (4+5) | | \$ _____ |

Annual Percentage Rate _____ %

Prepayment of Whole Note Even though I needn't pay more than the fixed installments, I have the right to prepay the whole outstanding amount of this note at any time. If I do, or if this loan is refinanced—that is, replaced by a new note—you will refund the unearned finance charge, figured by the rule of 78—a commonly used formula for figuring rebates on installment loans. However, you can charge a minimum finance charge of \$10.

Late Charge If I fall more than 10 days behind in paying an installment, I promise to pay a late charge of 5% of the overdue installment, but no more than \$5. However, the sum total of late charges on all installments can't be more than 2% of the total of payments or \$25, whichever is less.

Security To protect you if I default on this or any other debt to you, I give you what is known as a security interest in my O Motor Vehicle and/or _____ (see the Security Agreement I have given you for a full description of this property), O Stocks, O Bonds, O Savings Account (more fully described in the receipt you gave me today) and any account or other securities of mine coming into your possession.

Insurance I understand I must maintain property insurance on the property covered by the Security Agreement for its full insurable value, but I can buy this insurance through a person of my own choosing.

Default I'll be in default:

1. If I don't pay an installment on time; or
2. If any other creditor tries by legal process to take any money of mine in your possession.

You can then demand immediate payment of the balance of this note, minus the part of the finance charge which hasn't been earned figured by the rule of 78. You will also have other legal rights, for instance, the right to repossess, sell and apply security to the payments under this note and any other debts I may then owe you.

Irregular Payments You can accept late payments or partial payments, even though marked "payment in full", without losing any of your rights under this note.

Delay in Enforcement You can delay enforcing any of your rights under this note without losing them.

Collection Costs If I'm in default under this note and you demand full payment, I agree to pay you interest on the unpaid balance at the rate of 1% per month, after an allowance for the unearned finance charge. If you have to sue me, I also agree to pay your attorney's fees equal to 15% of the amount due, and court costs. But if I defend and the court decides I am right, I understand that you will pay my reasonable attorney's fees and the court costs.

Cosigners If I'm signing this note as a cosigner, I agree to be equally responsible with the borrower, although you may sue either of us. You don't have to notify me that this note hasn't been paid. You can change the terms of payment and release any security without notifying or releasing me from responsibility on this note.

Copy Received The borrower acknowledges receipt of a completely filled-in copy of this note.

Signatures

Addresses

Borrower: _____	_____
Cosigner: _____	_____
Cosigner: _____	_____
Cosigner: _____	_____

Not Like If something should happen and you can't pay on time, please call us immediately at (212) 559-3061.

Personal Finance Department
First National City Bank

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 012185
BILL NO. SB 66

Listing Firm: _____ Phone: _____ B rms. _____ Approx. Age: _____ Price: _____

Address of property: _____

Proposed terms: _____

Occupied by: _____ Phone: _____

Owner(s): _____

Owner's Address: _____ Phone: _____

Listing Agent: _____ Phone: _____

Multilock ☐ Yes ☐ No Key at _____ Call before showing ☐ Yes ☐ No

Area of Grade School _____ High School _____
School Bus ☐ Yes ☐ No School Bus ☐ Yes ☐ No

As of _____ Reserve _____ TYPE OF _____
/ Balance _____ LOAN _____

Cont. Balance \$ _____ Interest Rate _____ %

Escrow at _____ between _____

Mtge. Bal \$ _____ Interest Rate _____ % Mtg. Co. _____

Total Payment _____ P & I \$ _____ RESERVE \$ _____

SID #		CIRCLE	CURRENT ANNUAL PMT.	ANNUAL PRINCIPAL	CURRENT INTEREST AMOUNT	YEARS	PAY OFF
	STREET	YES NO					
	SEWER	YES NO					
	CURBS	YES NO					
		YES NO					
		YES NO					

Possession on Closing ☐ Other: _____

Fenced Yd: _____ Patio: _____ Deck: _____

LEGAL DESCRIPTION:

REMARKS:

TO THE BEST OF MY KNOWLEDGE, THE FOLLOWING ITEMS ARE IN GOOD REPAIR AND WORKING CONDITION, AND I AM UNAWARE OF ANYTHING WRONG WITH THE FOUNDATION, ROOF, SIDING, WIRING, DRAINAGE, HEATING, PLUMBING OR SANITATION SYSTEM EXCEPT:

FOR VALUE RECEIVED, you hereby are employed to sell or exchange the property described hereon at the selling price and at the terms noted. You are authorized to accept a deposit on the purchase price. I agree that in the event of sale of this property through your efforts, I will forthwith deliver to the escrow agent all requisite papers and execute contracts of sale and / or good and sufficient deed of conveyance, together with a title policy insuring marketable title to date. This employment and sole right to sell shall continue irrevocably from the date hereof until the expiration date below. I agree to pay you _____ percent (____%) of the selling price as and for your compensation hereunder in the event that you or any broker cooperating with you shall find a buyer ready and willing to enter into a contract for said price and terms, or at such other price and terms as I accept, for the sale or exchange of said real property by you or any other, including myself, while this contract is in force. I agree to pay you such compensation should a sale or exchange be made or an agreement to sell or exchange be entered into, or in the event I lease, rent or lend such property and such arrangement is ultimately consummated in a sale, by me within one hundred twenty (120) days after the termination of this authorization, to or with parties with whom you negotiated during the term hereof, or to or with parties who became interested in said property, directly or indirectly, as a result of any of the activities or efforts of you or your agents, including, but not limited to, the placing of a "For Sale" sign, advertising or personal referrals or contracts; unless such sale or exchange was made or agreement or exchange entered into during the term of a valid, exclusive authorization to sell given by me to a licensed real estate broker other than you after the termination of this agreement. I agree to pay you said percent of the listing price if I withdraw said property from sale or exchange or otherwise prevent performance hereunder by you. I warrant that I am the owner of said property, and that my title thereto is good and marketable. Taxes levied on said property for the current tax year are to be pro rated between myself and the buyer. In case of an exchange I have no objection to your representing and accepting compensation from the other party to the exchange as well as myself. I hereby authorize you, your sub-agents and customers to enter any part of said property at any reasonable time to show same. I authorize you, at any subsequent time, to fill in and complete all or any part of the data hereon (except price, terms, possession, listing expiration date and commission). The following items are to be left upon the premises as part of the property purchased: All irrigation fixtures and equipment, plumbing and heating fixtures and equipment (including stokers and oil tanks), water heaters, electric light fixtures, light bulbs and fluorescent lamps, bathroom fixtures, and all other fixtures and equipment, including screens, storm doors and windows, attached carpeting, linoleum, attached television antenna, all shrubs and trees and all fixtures except:

ALL MEASUREMENTS APPROXIMATE

LOWER		MAIN	UPPER
X	Living	X	X
X	Formal Dining	X	X
X	Kitchen	X	X
X	Bkfst.	X	X
X	Den	X	X
X	Family	X	X
X	Utility	X	X
X	Bdrm.	X	X
X		X	X
X		X	X
X		X	X
X	Bath	X	X
X	Bath	X	X

19 Taxes

Includes SID's
Yes ☐ No ☐

Sewage Connected to:
Public ☐
Private ☐
Community ☐

Available:
Public ☐
Community ☐

Paved Street
Yes ☐ No ☐

Curb
Yes ☐ No ☐

Public Sidewalk
Yes ☐ No ☐

Public Water
Yes ☐ No ☐

Well Water
Yes ☐ No ☐

Depth

Approx. Sq. Ft.

Main:

Upper:

Lower:

Fireplace(s)

0 1 2 3

Range Included

Yes ☐ No ☐

Dishwasher Included

Yes ☐ No ☐

Approximate % Bsmt

Water Softener

None ☐

Rented ☐

Included ☐

Hot Water

Gas ☐ Elec ☐

Heat

Roof

Garage ☐ or Carport ☐

None ☐

Single ☐

Double ☐

City Limits ☐

County ☐

Floors

Approximate Lot Size or Diagram

EXHIBIT NO. _____

DATE _____

012185

The following personal property is also included as a part of the property to be offered for sale for said price:

SENATE JUDICIARY COMMITTEE