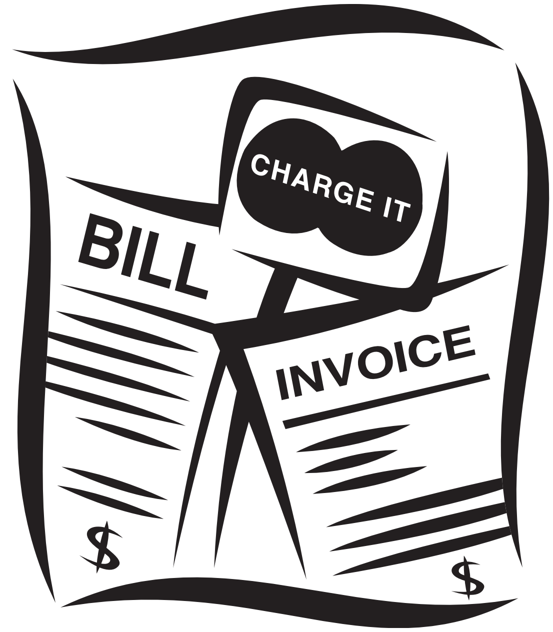
Fair Credit Billing



Have you ever been billed for merchandise you returned or never received? Has your credit card company ever charged you twice for the same item or failed to credit a payment to your account? While frustrating, these errors can be corrected. It takes a little patience and knowledge of the dispute settlement procedures provided by the Fair Credit Billing Act (FCBA).

The law applies to "open end" credit accounts, such as credit cards, and revolving charge accounts — such as department store accounts. It *does not* cover installment contracts — loans or extensions of credit you repay on a fixed schedule. Consumers often buy cars, furniture and major appliances on an installment basis, and repay personal loans in installments as well.

What types of disputes are covered?

The FCBA settlement procedures apply only to disputes about "billing errors." For example:

$ unauthorized charges. Federal law limits your responsibility for unauthorized charges to $50;
$ charges that list the wrong date or amount;
$ charges for goods and services you didn't accept or weren't delivered as agreed;
$ math errors;
$ failure to post payments and other credits, such as returns;

- $ failure to send bills to your current address — provided the creditor receives your change of address, in writing, at least 20 days before the billing period ends; and
- $ charges for which you ask for an explanation or written proof of purchase along with a claimed error or request for clarification.

To take advantage of the law's consumer protections, you must:

- $ write to the creditor at the address given for "billing inquiries," *not* the address for sending your payments, and include your name, address, account number and a description of the billing error.
- $ send your letter so that it reaches the creditor within 60 days after the first bill containing the error was mailed to you.

Send your letter by certified mail, return receipt requested, so you have proof of what the creditor received. Include copies (not originals) of sales slips or other documents that support your position. Keep a copy of your dispute letter.

The creditor must acknowledge your complaint in writing within 30 days after receiving it, unless the problem has been resolved. The creditor must resolve the dispute within two billing cycles (but not more than 90 days) after receiving your letter.

What happens while my bill is in dispute?

You may withhold payment on the disputed amount (and related charges), during the investigation. You must pay any part of the bill not in question, including finance charges on the undisputed amount.

Sample Dispute Letter

Date
Your Name
Your Address
Your City, State, Zip Code
Your Account Number

Name of Creditor
Billing Inquiries
Address
City, State, Zip Code

Dear Sir or Madam:

I am writing to dispute a billing error in the amount of $______on my account. The amount is inaccurate because (describe the problem). I am requesting that the error be corrected, that any finance and other charges related to the disputed amount be credited as well, and that I receive an accurate statement.

Enclosed are copies of (use this sentence to describe any enclosed information, such as sales slips, payment records) supporting my position. Please investigate this matter and correct the billing error as soon as possible.

Sincerely,

Your name
Enclosures: (List what you are enclosing.)

The creditor may not take any legal or other action to collect the disputed amount and related charges (including finance charges) during the investigation. While your account cannot be closed or restricted, the disputed amount may be applied against your credit limit.

Will my credit rating be affected?

The creditor may not threaten your credit rating or report you as delinquent while your bill is in dispute. However, the creditor may report that you are challenging your bill. In addition, the Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants who exercise their rights, in good faith, under the FCBA. Simply put, you cannot be denied credit simply because you've disputed a bill.

What if...
...the bill is incorrect?

If your bill contains an error, the creditor must explain to you — in writing — the corrections that will be made to your account. In addition to crediting your account, the creditor must remove all finance charges, late fees or other charges related to the error.

If the creditor determines that you owe a portion of the disputed amount, you must get a written explanation. You may request copies of documents proving you owe the money.

...the bill is correct?

If the creditor's investigation determines the bill is correct, you must be told promptly and in writing how much you owe and why. You may ask for copies of relevant documents. At this point, you'll owe the disputed amount, plus any finance charges that accumulated while the amount was in dispute. You also may have to pay the minimum amount you missed paying because of the dispute.

If you disagree with the results of the investigation, you may write to the creditor, but you must act within 10 days after receiving the explanation, and you may indicate that you refuse to pay the disputed amount. At this point, the creditor may begin collection procedures. However, if the creditor reports you to a credit bureau as delinquent, the report also must state that you don't think you owe the money. The creditor must tell you who gets these reports.

...the creditor fails to follow the procedure?

Any creditor who fails to follow the settlement procedure may not collect the amount in dispute, or any related finance charges, up to $50, *even if the bill turns out to be correct*. For example, if a creditor acknowledges your complaint in 45 days — 15 days too late — or takes more than two billing cycles to resolve a dispute, the penalty applies. The penalty also applies if a creditor threatens to report — or improperly reports — your failure to pay to anyone during the dispute period.

An important caveat

Disputes about the quality of goods and services are not "billing errors," so the dispute procedure does not apply. However, if you buy unsatisfactory goods or services with a credit or charge card, you can take the same legal actions against the card issuer as you can take under state law against the seller.

To take advantage of this protection regarding the quality of goods or services, you must:

- have made the purchase (it must be for more than $50) in your home state or within 100 miles of your current billing address;
- make a good faith effort to resolve the dispute with the seller first.

The dollar and distance limitations don't apply if the seller also is the card issuer — or if a special business relationship exists between the seller and the card issuer.

Other billing rights

Businesses that offer "open end" credit also must:

- $ give you a written notice when you open a new account — and at certain other times — that describes your right to dispute billing errors;
- $ provide a statement for each billing period in which you owe — or they owe you — more than one dollar;
- $ send your bill at least 14 days before the payment is due — if you have a period within which to pay the bill without incurring additional charges;
- $ credit all payments to your account on the date they're received, unless no extra charges would result if they failed to do so. Creditors are permitted to set some reasonable rules for making payments, say setting a reasonable deadline for payment to be received to be credited on the same date; and
- $ promptly credit or refund overpayments and other amounts owed to your account. This applies to instances where your account is owed more than one dollar. Your account must be credited promptly with the amount owed. If you prefer a refund, it must be sent within seven business days after the creditor receives your written request. The creditor must also make a good faith effort to refund a credit balance that has remained on your account for more than six months.

Suing the creditor

You can sue a creditor who violates the FCBA. If you win, you may be awarded damages, plus twice the amount of any finance charge — as long as it's between $100 and $1,000. The court also may order the creditor to pay your attorney's fees and costs.

If possible, hire a lawyer who is willing to accept the amount awarded to you by the court as the entire fee for representing you. Some lawyers may not take your case unless you agree to pay their fee — win or lose — or add to the court-awarded amount if they think it's too low.

Reporting FCBA violations

The Federal Trade Commission (FTC) enforces the FCBA for most creditors except banks. The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, call toll-free, 1-877-FTC-HELP (1-877-382-4357), or use the complaint form at www.ftc.gov. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

FEDERAL TRADE COMMISSION	ftc.gov
1-877-FTC-HELP	FOR THE CONSUMER

Federal Trade Commission
Bureau of Consumer Protection
Division of Consumer and Business Education

August 1999

Truth in Lending Act, Amendments

Fair Credit Billing Act

15 USC 1601
July 9, 1986

THE FAIR CREDIT BILLING ACT

Public Law 93-495
93rd Congress - H.R. 11221

TITLE III - FAIR CREDIT BILLING

§ 301. Short Title

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

Fair Credit Billing Act. 15 USC 1601 note.

§ 302. Declaration of purpose

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

§ 303. Definitions of creditor and open end credit plan

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

<u>Post</u>, p. 1512. <u>Infra</u>, 15 USC 1637.

§ 304. Disclosure of fair credit billing rights

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

Post, pp. 1512, 1515.

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

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

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

§ 305. Disclosure of billing contact

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

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

§ 306. Billing practices

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

"Chapter 4—CREDIT BILLING

Sec.

§ 161. Correction of billing errors

"(a) If a creditor, within sixty days after having transmitted to an obligor a statement of the obligor's account in connection with an extension of consumer credit, receives at the address disclosed under section 127(b) (11) a written notice (other than notice on a payment stub or other payment medium supplied by the creditor if the creditor so stipulates with the disclosure required under section 127(a) (8)) from the obligor in which the obligor— **15 USC 1666.** Ante, p. 1511. Ante, p. 1511.

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

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

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

the creditor shall, unless the obligor has, after giving such written notice and before the expiration of the time limits herein specified, agreed that the statement was correct—

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

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

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

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

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

Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

Noncompliance.

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

§ 162. Regulation of credit reports

15 USC 1666a.

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

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

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

§ 163. Length of billing period

"(a) If an open end consumer credit plan provides a time period within which an obligor may repay any portion of the credit extended without incurring an additional finance charge, such additional finance charge may not be imposed with respect to such portion of the credit extended for the billing cycle of which such period is a part unless a statement which includes the amount upon which the finance charge for that period is based was mailed at least fourteen days prior to the date specified in the statement by which payment must be made in order to avoid imposition of that finance charge. 15 USC 1666b.

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

§ 164. Prompt crediting of payments

"Payments received from an obligor under an open end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Board. Such regulations shall prevent a finance charge from being imposed on any obligor if the creditor has received the obligor's payment in readily identifiable form in the amount, manner, location, and time indicated by the creditor to avoid the imposition thereof. 15 USC 1666c.

§ 165. Crediting excess payments

"Whenever an obligor transmits funds to a creditor in excess of the total balance due on an open end consumer credit account, the creditor shall promptly (1) upon request of the obligor refund the amount of the overpayment, or (2) credit such amount to the obligor's account. 15 USC 1666d.

§ 166. Prompt notification of returns

15 USC 1666e.

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

§ 167. Use of cash discounts

15 USC 1666f.

"(a) With respect to credit card which may be used for extensions of credit in sales transactions in which the seller is a person other than the card issuer, the card issuer may not, by contract or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder to pay by cash, check, or similar means rather than use a credit card.

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

§ 168. Prohibition of tie-in services

15 USC 1666g.

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

§ 169. Prohibition of offsets

15 USC 1666h.

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

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

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

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

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

§ 170. Rights of credit card customers

"(a) Subject to the limitation contained in subsection (b), a card issuer who has issued a credit card to a cardholder pursuant to an open end consumer credit plan shall be subject to all claims (other than tort claims) and defenses arising out of any transaction in which the credit card is used as a method of payment or extension of credit if (1) the obligor has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the credit card; (2) the amount of the initial **15 USC 1666i.**

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

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

§ 171. Relation to State laws

15 USC 1666j.

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

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

§ 307. Conforming amendments

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

"4. Credit Billing . . . . 161"

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

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

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

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

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

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

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

§ 308. Effective date

This title takes effect upon the expiration of one year after the date of its enactment. 15 USC 1666 note.

Federal Trade Commission

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