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Senate Bill 47: Opt-Out Provisions/Contracts  
Senator Valerie Wiener  
February 12, 2003

Mr. Chairman and members of the Committee, for the record, I am State Senator Valerie Wiener, representing Clark County, District 3. Today I appear before you to urge your support for Senate Bill 47, which makes certain opt-out provisions in contracts with consumers unenforceable.

To help you understand SB 47, it is important to understand what an opt-out provision means and what special circumstances this bill addresses.

An "opt-out" provision, as defined in Section 5, means a consumer agrees to contract provisions that involve the purchase of goods or services on a periodic or recurrent basis. Unless the consumer takes an affirmative step to cancel the purchase or the contract—or return the goods—the contract continues.

Mr. Chairman and members of the Committee, when I attended law school, one of the first classes I took was contract law. Two key components of a contract are a "meeting of the minds" of both parties AND the exchange of consideration. SB-57 addresses situations where there is NO meeting of the minds, yet the unknowing consumer finds a purchase on his or her credit card statement. Often, the credit card holder doesn't even know what the purchase is for.

I consider such a situation as a form of "identity theft" . . . and have offered this legislation to stop this practice in Nevada.

You will note details that help ensure protection for the consumer in Section 7. In this section, the seller is required to have a written contract signed by the consumer. The opt-out provision must be written in understandable language and printed in an easy-to-read typeface. The particular opt-out provision in the contract must be initialed by the consumer to indicate he or she understands that specific provision.

In addition, at least 20 days' notice is required for the seller to notify the consumer that a charge will be made to the consumer's credit card. With the minimum-20-day notice, the seller must also state that the charge will be made, unless the consumer takes an affirmative action to prevent the charge AND the notice must contain a verbatim copy of the opt-out provision and all contact information, including addresses and phone numbers, that are needed for the consumer to exercise his or her rights to opt out.

If a seller violates these provisions, the consumer may bring a civil action to rescind the contract and to recover: 1) the total amount of money charged to the credit card of the consumer under the contract, plus 2) statutory damages equal to three times the total amount of money charged to the credit card under the contract or \$10,000 (whichever is greater); plus 3) reasonable attorney's fees and costs.

SB 47 does not allow for alterations or waivers of these provisions. Any contract that violates these provisions is void. Any violations of these provisions are subject to the civil and administrative remedies and penalties imposed for deceptive trade practices.

Mr. Chairman and members of the committee, this is an important consumer protection bill. It holds accountable those businesses that impose credit card charges that often fall "under the radar" on consumers. Often, because the amounts might be relatively low, the charges might be missed or overlooked until a second or third billing statement.

*However, this charge will not appear on one card — it will appear on tens or hundreds of thousands of cards.*  
 As I have said, this bill addresses, in particular, those transactions in which an initial "meeting of the minds" has not occurred. As I urge your support for SB 47, I want to add that the Attorney General's Office is processing a bill draft that also addresses deceptive trade practices involving credit cards. The AG's bill, though still in drafting, would provide essential and complimentary protections to consumers. When that bill comes before your committee, I hope that I will have the opportunity to testify about its merits as well.

Mr. Chairman and members of the committee, I appreciate your letting me appear before you on SB 47 and urge your support of this important consumer protection bill. By passing this bill, ~~we will strongly discourage this form of identity theft in Nevada. With your support of SB 47, we have an opportunity to~~ give consumers both added protection and peace of mind when they read their monthly credit card statements.

Thank you.