

/\* The Federal Trade Commission has instituted rules which require businesses to give "Miranda Warnings" to cosigners. In addition, the previous practice of small loan companies of taking liens on household goods was ruled to be an unfair trade practice. Finally, this section of the law also limits wage assignments. The cosigner warning, such you need to prepare one, can be obtained from the document preparation menu. As usual, we explain the gobbledygook along with the law. \*/

## CREDIT PRACTICES- REGARDING COSIGNERS; WAGE ASSIGNMENTS; LIMITATIONS OF LIENS ON CONSUMER LENDING

### 16 Code of Federal Regulations, Section 444

#### Section 444.1

##### Definitions--

(a) "Lender." A person who engages in the business of lending money to consumers within the jurisdiction of the Federal Trade Commission.

(b) "Retail Installment seller." A person who sells goods or services to consumers on a deferred payment basis or pursuant to a lease-purchase arrangement within the jurisdiction of the Federal Trade Commission.

(c) "Person." An individual, corporation, or other business organization.

(d) "Consumer." A natural person who seeks or acquires goods, services, or money for personal, family or household use.

(e) "Obligation." An agreement between a consumer and a lender or retail installment seller.

(f) "Creditor." A lender or a retail installment seller.

(g) "Debt." Money that is due or alleged to be due from one to another.

(h) "Earnings." Compensation paid or payable to an individual or for his or her own account for personal services rendered or to be rendered by him or her, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(i) "Household goods." Clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the consumer and his or her dependents, provided that the following are not included within the scope of the term "household goods":

(1) Works of art;

(2) Electronic entertainment equipment (except one television and one radio);

(3) Items acquired as antiques; and

(4) Jewelry (except wedding rings).

(j) "Antique." Any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character.

(k) "Cosigner." A natural person who renders himself or herself liable for the obligation of another person without compensation. The term shall include any person whose signature is requested as a condition to granting credit to another person, or as a condition for forbearance on collection of another person's obligation that is in default. The term shall not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to State law. A person who does not receive goods, services, or money in return for a credit obligation does not receive compensation within the meaning of this definition. A person is a cosigner within the meaning of this definition whether or not he or she is designated as such on a credit obligation.

## Section 444.2

### Unfair credit practices--

(a) In connection with the extension of credit to consumers in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, it is unfair act or practice within the meaning of Section 5 of that Act for a lender or retail installment seller directly or indirectly to take or receive from a consumer an obligation that:

(1) Constitutes or contains a cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of right to notice and the opportunity to be heard in the event of suit or process thereon.

/\* Many states still recognize cognovit (or other phrase) promissory notes, which allow the owner of the note to appoint an attorney to represent you, to go to Court and get a judgment if the holder of the note claims that the note wasn't paid. Of course, other states do not allow these, even if signed. The FTC has ruled that these notes are not lawful in consumer transactions. \*/

(2) Constitutes or contains an executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to

the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

/\* A few states allow the maker of a note to waive exemptions that they are otherwise entitled to; the FTC here rules that the practice is unlawful. \*/

(3) Constitutes or contains an assignment of wages or other earnings unless:

(i) The assignment by its terms is revocable at the will of the debtor, or

(ii) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, or

(iii) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(4) Constitutes or contains a non possessory security agreement in household goods other than a purchase money security interest.

/\* It is lawful if you buy a product with a loan for the lender to have a lien on it. \*/

#### Section 444.3 Unfair or deceptive cosigner practices--

(a) In connection with the extension of credit to consumers in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, it is:

/\* Virtually 99%+ of all transactions will fall within the definition of interstate commerce. \*/

(1) A deceptive act or practice within the meaning of section 5 of that Act for a lender or retail installment seller, directly or indirectly, to misrepresent the nature or extent of cosigner liability to any person.

(2) An unfair act or practice within the meaning of section 5 of that Act for a lender or retail installment seller, directly or indirectly, to obligate a cosigner unless the cosigner is informed prior to becoming obligated, which in the case of open end credit shall mean prior to the time that the agreement creating the cosigner's liability for future charges is executed, of the nature of his or her liability as a cosigner.

(b) Any lender or retail installment seller who complies with the preventative requirements in paragraph (c) of this section does not violate paragraph (a) of this section.

(c) To prevent these unfair or deceptive acts or practices, a disclosure, consisting of a separate document that shall contain the following statement and no other, shall be given to the cosigner prior to becoming obligated, which in the case of open end credit shall mean prior to the time that the agreement creating the cosigner's liability for future charges is executed:

#### NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure that you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of YOUR credit rating.

This notice is not the contract that makes you liable for the debt.

#### Section 444.4

##### Late charges---

(a) In connection with collecting a debt arising out of an extension of credit to a consumer in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, it is an unfair act or practice within the meaning of section 5 of that Act for a creditor, directly, or indirectly, to levy or collect any delinquency charge on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date of within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charges(s) assessed on earlier installment(s).

(b) For purposes of this section, "collecting a debt" means any activity other than the use of judicial process that is intended to bring about repayment of all or part of a consumer debt.

/\* In addition this act provides that states can impose more restrictive requirements.\*/