AMENDMENT TO H.R. 627, AS REPORTED

OFFERED BY MR. WELCH OF VERMONT

After section 8, insert the following new section (and redesignate subsequent sections accordingly):

1 **SEC. 9. PROHIBITION ON CERTAIN UNFAIR CREDIT AND**
2 **FUND TRANSFER PRACTICES.**

3 (a) IN GENERAL.—The Truth in Lending Act (15
4 U.S.C. 1601 et seq.) is amended by adding at the end
5 the following new chapter:

6 **"CHAPTER 6—PROHIBITION ON UNFAIR**
7 **PRACTICES IN ELECTRONIC PAYMENT**
8 **SYSTEM NETWORKS**

"Sec. 191. Definitions.
"Sec. 192. Additional charges on merchants and consumers for premium payment cards prohibited.
"Sec. 193. Certain creditor or credit card network-imposed restrictions on merchants prohibited.
"Sec. 194. Fair and transparent transactions.
"Sec. 195. Enforcement.

9 **"SEC. 191. DEFINITIONS.**

10 "For purposes of this title, the following definitions
11 shall apply:

12 "(1) CHARGE CARD.—The term charge card
13 has the same meaning as in section 127(c)(4)(E).

14 "(2) DEBIT CARD.—The term 'debit card'
15 means any card or other device issued by a financial

1 institution (as defined in section 903(8)) to a con-
2 sumer for use in initiating electronic fund transfers
3 (as defined in section 903(6)) from the account of
4 the consumer at such financial institution for the
5 purpose of transferring money between accounts or
6 obtaining money, property, labor, or services.

7 "(3) ELECTRONIC PAYMENT SYSTEM NET-
8 WORK.—The term 'electronic payment system net-
9 work' means a network that provides, through li-
10 censed members, processors, or agents—

11 "(A) for the issuance of payment cards (by
12 credit card issuers in the case of a credit card,
13 charge card issuers in the case of a charge
14 card, or financial institutions (as defined in sec-
15 tion 903(8)) in the case of debit cards) bearing
16 any logo of the network;

17 "(B) the proprietary services and infra-
18 structure that route information and data to fa-
19 cilitate transaction authorization, clearance, and
20 settlement that merchants must access in order
21 to accept payment cards bearing any logo of the
22 network as payment for goods and services; and

23 "(C) for the screening and acceptance of
24 merchants into the network in order to allow
25 such merchants to accept payment cards bear-

1 ing any logo of the network as payment for
2 goods and services.
3 "(4) LICENSED MEMBER.—The term 'licenced
4 member', in connection with any electronic payment
5 system network, includes—
6 "(A) any creditor or charge card issuer
7 that is authorized to issue credit cards or
8 charge cards bearing any logo of the network;
9 "(B) any financial institution (as defined
10 in section 903(8)) that is authorized to issue
11 debit cards to consumers who maintain ac-
12 counts at such institution; and
13 "(C) any person, including any financial
14 institution, on occasion referred to as an
15 'acquirer' that is authorized—
16 "(i) to screen and accept merchants
17 into any program under which any pay-
18 ment card bearing any logo of such net-
19 work may be accepted by the merchant for
20 payment for goods or services;
21 "(ii) to process transactions on behalf
22 of any such merchant for payment; and
23 "(iii) to complete financial settlement
24 of any such transaction on behalf of such
25 merchant.

1 "(5) MERCHANT.—The term 'merchant' means
2 any person in the business of selling or providing
3 any good or service for consideration.
4 "(6) PAYMENT CARD.—The term 'payment
5 card' means a credit card , a charge card, or a debit
6 card.

7 **"SEC. 192. ADDITIONAL CHARGES ON MERCHANTS AND**
8 **CONSUMERS FOR PREMIUM PAYMENT CARDS**
9 **PROHIBITED.**

10 "(a) IN GENERAL.—An electronic payment system
11 network may not, directly or through any agent, processor,
12 or licensed member of the network, require or permit any
13 merchant to pay any interchange, processing, or other fee
14 in connection with any payment card transaction initiated
15 through a premium payment card in any amount in excess
16 of the amount of any such interchange, processing, or
17 other fee that would be imposed in connection with such
18 payment card transactions if initiated through a nonpre-
19 mium payment card.
20 "(b) PREMIUM DEFINITION.—For purposes of sub-
21 section (a), the following definitions shall apply:
22 "(1) PREMIUM PAYMENT CARD.—The term
23 'premium payment card' means a payment card that
24 provides rewards or other cardholder benefits or
25 services for the use of the card other than those ben-

1 efits offered to any customer within the electronic
2 payment system network.
3 "(2) NONPREMIUM PAYMENT CARD.—The term
4 'nonpremium payment card' means a payment card
5 bearing any logo of an electronic payment system
6 network that is not a premium payment card.

7 **"SEC. 193. CERTAIN CREDITOR OR CREDIT CARD NET-**
8 **WORK-IMPOSED RESTRICTIONS ON MER-**
9 **CHANTS PROHIBITED.**

10 "(a) PRICING DISPLAY RESTRICTIONS.—With re-
11 spect to any credit card which may be used for extensions
12 of credit through an electronic payment system network
13 in connection with sales transactions in which the mer-
14 chant is a person other than the card issuer, the electronic
15 payment system network may not, directly or through any
16 agent, processor, or licensed member of the network, by
17 contract, or otherwise, restrict the merchant's discretion
18 as to how to display or advertise the merchant's prices.
19 "(b) HONOR ALL CARDS RULE.—An electronic pay-
20 ment system network may not, directly or through any
21 agent, processor, or licensed member of the network, pro-
22 hibit any merchant that otherwise accepts payment cards
23 bearing any logo of the network from refusing to accept
24 any particular type of card due to its cost, except that
25 the seller may be prohibited from refusing to accept a pay-

1 ment card issued by a particular creditor or financial insti-
2 tution without respect to any cost differences.
3 "(c) STEERING CONSUMERS.—An electronic payment
4 system network may not, directly or through any agent,
5 processor, or licensed member of the network, by contract,
6 or otherwise, inhibit the ability of any merchant to direct
7 consumers to the merchant's preferred form of payment.
8 "(d) SINGLE ENTITY RULE.—An electronic payment
9 system network may not, directly or through any agent,
10 processor, or licensed member of the network, by contract,
11 or otherwise, require any merchant to accept payment
12 cards at 1 or more business locations in order to be able
13 to accept payment cards at another business location.
14 "(e) CHARGEBACKS FOR TRANSACTIONS ON CERTAIN
15 POS TERMINALS THAT EXCEED THE ALLOWABLE
16 AMOUNT ON SUCH DEVICES.—An electronic payment sys-
17 tem network may not, directly or through any agent, proc-
18 essor, or licensed member of the network, by contract, or
19 otherwise, allow or require a chargeback to any merchant
20 for any payment involving any payment and transfer initi-
21 ated by the consumer at a point-of-sale terminal operated
22 by the merchant on the basis that the amount of the trans-
23 action exceeded any preauthorized or predetermined
24 amount for such terminal.

1 "(f) MERCHANTS PERMITTED TO ESTABLISH MIN-
2 IMUM OR MAXIMUM AMOUNTS FOR PAYMENT BY PAY-
3 MENT CARDS.—An electronic payment system network
4 may not, directly or through any agent, processor, or li-
5 censed member of the network, by contract, or otherwise,
6 prohibit any merchant from setting any maximum amount
7 or minimum amount for the use of a payment card bearing
8 any logo of such network by a consumer to pay for a trans-
9 action with such merchant.

10 "(g) RESTRICTIONS ON NETWORK ROUTING PROHIB-
11 ITED.—An electronic payment system network may not,
12 directly or through any agent, processor, or licensed mem-
13 ber of the network, by contract, or otherwise, prohibit any
14 merchant from directing the routing of payment card
15 transactions for processing in the way chosen by the mer-
16 chant.

17 "(h) PROHIBITION ON ANY MINIMUM REQUIREMENT
18 FOR NUMBER OF TRANSACTIONS.—An electronic payment
19 system network may not, directly or through any agent,
20 processor, or licensed member of the network, by contract,
21 or otherwise—

22 "(1) impose a requirement on any merchant to
23 meet any minimum number of transactions, in any
24 period, in which the consumers pay for such trans-

1 actions using a payment card bearing any logo of
2 such network; or
3 "(2) impose a fee on, or take any other action
4 that is adverse to the interests of, a merchant for
5 the failure of the merchant to meet any minimum
6 number of such transactions in any period.

7 **"SEC. 194. FAIR AND TRANSPARENT TRANSACTIONS.**

8 "(a) DISCLOSURE OF CONTRACT TERMS.—An elec-
9 tronic payment system network, and any agent, processor,
10 or licensed member of the network, may not establish or
11 maintain, directly or indirectly by contract or through a
12 licensing arrangement, any agreement with a merchant,
13 unless the network, agent, processor, or licensed member
14 has made available to the merchant all of the rules, terms,
15 and conditions to which such merchant will be bound
16 under such agreement, including the complete operating
17 rules of the relevant payment system using payment cards
18 bearing any logo of such network, without restrictions on
19 the merchant's use of any such information.

20 "(b) REVIEW OF RULES, TERMS, AND AGREE-
21 MENTS.—The Federal Trade Commission shall—
22 "(1) prescribe regulations to—
23 "(A) ensure that all of the rules, terms,
24 and conditions to which a merchant or con-
25 sumer is subject under an agreement with an

1 electronic payment system network, or any
2 agent, processor, or licensed member of the net-
3 work, directly or indirectly, by contract or
4 through a licensing arrangement, are not unfair
5 or deceptive to consumers and merchants and
6 are not anticompetitive; and
7 "(B) prohibit any unfair or deceptive act
8 or practice or anticompetitive act or practice
9 that may otherwise be permitted under or result
10 from any rule, term, or condition described in
11 subparagraph (A); and
12 "(2) regularly review all of the rules, terms, and
13 conditions described in paragraph (1)(A) established
14 by each electronic payment system network, or any
15 agent, processor, or licensed member of the network.
16 "(c) INTERCHANGE AND OTHER FEES.—
17 "(1) COLLECTION AND DISSEMINATION OF IN-
18 FORMATION.—The Board shall collect, publish, and
19 disseminate to the public—
20 "(A) complete information on the inter-
21 change, processing and other fees charged by
22 each electronic payment system network, or any
23 agent, processor, or licensed member of the net-
24 work, in connection with any aspect of trans-
25 actions initiated by consumers using payment

1 cards bearing any logo of such network, includ-
2 ing fees imposed by the payment card issuer in
3 connection with any such transaction; and
4 "(B) all of the rules, terms, and conditions
5 to which a merchant or a consumer is subject
6 under an agreement with an electronic payment
7 system network, or any agent, processor, or li-
8 censed member of the network, directly or indi-
9 rectly by contract or through a licensing ar-
10 rangement for transactions indicated by con-
11 sumers using payment cards bearing any logo
12 of such network.
13 "(2) REGULATIONS.—For purposes of this sub-
14 section, the Board may prescribe regulations and
15 issue orders requiring any electronic payment system
16 network, and any agent, processor, or licensed mem-
17 ber of any such network, to submit any information,
18 including rules, agreements, and contracts, that the
19 Board determines to be necessary or appropriate for
20 the Board to meet the requirements of paragraph
21 (1).
22 **"SEC. 195. ENFORCEMENT.**
23 "Subsections (a), (b), and (h) of section 130 shall be
24 applied for purposes of this chapter by substituting the
25 term 'an electronic payment system network, or any agent,

1 processor, or licensed member of any such network' for
2 'creditor' each place such term appears in such sub-
3 sections.".

4 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

5 (1) Section 127(a) of the Truth in Lending Act
6 (U.S.C. 1637(a)) is amended by inserting after
7 paragraph (8) the following new paragraph:

8 "(9) In the case of any account under which a
9 credit card issued in connection with the account
10 bears the logo of any electronic payment system net-
11 work, the amounts of any fees charged by the net-
12 work, or any agent, processor, or licensed member of
13 the network, in connection with any aspect of trans-
14 actions initiated by the consumers using such credit
15 card, including any interchange, processing, or other
16 fees.".

17 (2) Section 127(b) of the Truth in Lending Act
18 (U.S.C. 1637(b)) is amended by adding at the end
19 the following new paragraph:

20 "(13) In the case of any account under which
21 a credit card issued in connection with the account
22 bears the logo of any electronic payment system net-
23 work, if any fee was charged by the network, or any
24 agent, processor, or licensed member of the network,
25 in connection with any aspect of a transaction which

1 resulted in an extension of credit reported on such
2 statement, the amount of such fee, including any
3 interchange, processing, or other fee.".
4 (3) Section 127(c)(1)(A) of the Truth in Lend-
5 ing Act (U.S.C. 1637(c)(1)(A)) is amended by add-
6 ing at the end the following new clause:
7 "(v) INTERCHANGE AND OTHER
8 FEES.—In the case of an application or so-
9 licitation to open an account under which
10 a credit card issued in connection with the
11 account would bear the logo of any elec-
12 tronic payment system network, the
13 amounts of any fees charged by the net-
14 work, or any agent, processor, or licensed
15 member of the network, in connection with
16 any aspect of any transaction initiated by
17 the consumer using such credit card, in-
18 cluding any interchange, processing, or
19 other fees.".
20 (4) Section 127(c)(4)(A) of the Truth in Lend-
21 ing Act (U.S.C. 1637(c)(4)(A)) is amended by add-
22 ing at the end the following new clause:
23 "(iv) In the case of an application or
24 solicitation to open an account under
25 which a charge card issued in connection

with the account would bear the logo of any electronic payment system network, the amounts of any fees charged by the network, or any agent, processor, or licensed member of the network, in connection with any aspect of transactions initiated by the consumer using such charge card, including any interchange, processing, or other fees.".

(5) Section 130(a) of the Truth in Lending Act (U.S.C. 1640(a)) is amended by striking "chapter 4 or 5" and inserting "chapter 4, 5, or 6".

(6) Section 130(b) of the Truth in Lending Act (U.S.C. 1640(b)) is amended by inserting "or 6" after "chapter 5".

(7) Section 130(g) of the Truth in Lending Act (U.S.C. 1640(g)) is amended by striking "chapter 4 or 5" and inserting "chapter 4, 5, or 6".

(8) Section 906(c) of the Electronic Fund Transfer Act (U.S.C. 1693d(c)) is amended—

(A) in paragraph (3), by striking "and" after the semicolon at the end;

(B) in paragraph (4), by striking the period at the end and inserting "; and"; and

1 (C) by adding at the end the following new
2 paragraph:
3 "(5) in the case of an account under which an
4 electronic fund transfer may be initiated by the con-
5 sumer by means of any card or other device issued
6 by the financial institution which bears the logo of
7 any electronic payment system network, if any fee
8 was charged by the network, or any agent, proc-
9 essor, or licensed member of the network, in connec-
10 tion with any aspect of a transaction which resulted
11 in an electronic fund transfer reported on such
12 statement, the amount of such fee, including any
13 interchange, processing, or other fee.".
14 (c) CLERICAL AMENDMENT.—The table of chapters
15 for the Truth in Lending Act is amended by inserting
16 after the item relating to chapter 5 the following new item:

"6. PROHIBITION ON UNFAIR PRACTICES IN ELECTRONIC PAYMENT SYSTEM NETWORKS.....191".