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Address on Consumer Credit Protection Legislation

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ADDRESS ON CONSUMER CREDIT PROTECTION LEGISLATION†

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> "If the uprisings were mostly spontaneous, some highly selective arson campaigns were apparently planned to destroy stores' credit records and give ghetto residents a financial reprieve. 'Don't grab the groceries,' one mother told her son, 'grab the book.' "
>
> Time Magazine, April 19, 1968.

> "Greater responsibility must be assumed through legislation for dealing with society's current problems and changing needs. Lawyers must help to create understanding of the need for legislative changes; they must draft appropriate legislation. They must press for its enactment, as individuals, as members of the organized bar, and as legislators."
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> Report of American Assembly on Law and the Changing Society, Center for Continuing Education, University of Chicago, March 14-17, 1968.

These two quotations represent the basic themes now confronting Congress and state legislatures throughout the United States in the consumer credit area. Since World War I consumer credit has expanded rapidly, and it can be expected that consumer credit outstanding in the United States will soon exceed one hundred billion dollars. This does not include home mortgage financing which is approximately two hundred and fifty billion dollars in volume. Obviously, the availability and utilization of consumer credit has a major impact upon our economy today. The choices that the consumer makes in utilizing credit available to him are closely watched by the economists in order to ascertain their effects upon total economic conditions. Perhaps more significant, however, is the growing concern expressed in many quarters about the use, misuse, and abuse of consumer credit and its effect upon every household in the United States. To many, the problem is one of overextensions of credit to consumers who are unable to cope with their financial affairs. Social workers often attribute family discord and breakdown to financial causes, and financial difficulties are resulting in thousands of personal bankruptcies each year at rates exceeding those

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of the Great Depression. Substantial evidence exists in recent riot-torn cities indicating that those places of business which follow the most dubious consumer credit practices were more often victimized than other places of business. Therefore, consumer-oriented groups are seeking the enactment of federal and state legislation designed to provide greater consumer protection in the credit extension area.

Not only are the consumers worried about the state of current legislation, but also the credit industry had sought and continues to seek legislative changes because of new developments. I need only mention the recent phenomenal growth of revolving charge accounts, revolving check credit plans, and credit cards as examples of the rapidly changing technological developments within the industry. The institution of each new credit-extending plan obviously involves a number of legal considerations. Therefore, from the viewpoints of both the consumer and the industry, a complete reevaluation of the existing legal structure governing consumer transactions is in order.

The responsibility for the development of the legal structure regulating consumer credit has remained with the states, except during wartime, when the federal government has imposed controls over the extension of consumer credit. An examination of the state laws presently governing consumer credit reveals a crazy-quilt pattern of regulation and control. In the beginning, state usury laws constituted the single device for control. In many states, the rates prescribed under general usury laws are extremely low, particularly in light of the current monetary situation in the United States.[1] Early in this century, illegal loan shark operations became a major problem because legal lenders could not lend money profitably to working classes within the usury limitations. The response to the loan shark problem was the development, by the Russell Sage Foundation, of the Uniform Small Loan Law which was enacted in every state except Arkansas and the District of Columbia.[2] This law provided for licensing and regulation of the small loan industry and, as an exception to the usury law, authorized the imposition of relatively high rates for loans involving small amounts of principal.[3] The purpose of the legislations was to make it possible for legitimate interests to invest capital in consumer credit operations and obtain legitimate profits. For example, the finance charge for a $500 loan repayable in 12 monthly installments permitted under the laws

1. The usury rate in Indiana is currently 8%. IND. ANN. STAT. § 19-12-104 (1964).
2. National Consumer Association, 1967 Financial Facts Yearbook 51. The Indiana adoption of this proposal may be found in IND. ANN. STAT. § 18-3001 *et seq.* (1964).
3. Under the Indiana Small Loan Act the maximum loan amount is $1,000 with interest rates ranging from 1½% to 3% per month on the unpaid balance, IND. ANN. STAT. § 18-3001 *et seq.* (1964).

of the states varies from $129.76 in Alaska to $64.72 in New York with a median of $81.52. The corresponding annual interest rates are 44.9%, 23.0%, and 28.8%.[4]

As additional needs arose, special legislation was adopted in most states to regulate the activities of other types of consumer credit grantors, including pawnbrokers, credit unions, industrial loan companies, industrial banks, and commercial banks.[5]

During the 1940's and 1950's many states adopted installment sales legislation governing the sales of motor vehicles, and other states adopted legislation covering sales of all consumer goods.[6] In some states, both types of legislation were adopted. More recently, some states have adopted legislation covering the newer forms of consumer credit such as revolving charge accounts. Each of these types of legislation has different rate ceilings and methods of computing charges. Therefore, if the ceiling rates are used, the credit cost varies with the purpose of the financing. For example, the consumer may be able to finance the purchase of a $300 refrigerator more cheaply than a $300 used car, but most consumers do not realize that their choice of which purchase to finance can make a difference in the cost of credit. The history of state legislation in the consumer credit area has been one of enactment of legislation in order to meet specific needs. The proliferation of legislation that now exists is often inconsistent, overlapping and has major gaps as well.[7]

In addition, the rules governing consumer credit as distinguished from consumer credit loans were developed in all but two states in such a manner as to exclude sales transactions from the usury law limitations. The doctrine developed by the courts was that the vendor of goods could maintain two prices for his merchandise. One was known as the cash price and the other was known as the time price.[8] The difference between these prices, known as the time-price differential, was not to be considered interest at all. Because of these different legal bases, two separate credit systems evolved so that the consumer credit market in most states today is legally segmented with one set of rules governing cash loans and another set of rules governing credit sales.

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4. The finance charges effective rate in Indiana are $81.52 & 28.8%.

5. See Johnson, *Regulation of Finance Charges in Consumer Instalment Credit*, 66 MICH. L. REV. 81 (1967).

6. The Indiana Retail Installment Sales Act applies to sales of goods at retail where the cash price is less than $10,000. IND. ANN. STAT. §58-901 *et seq.* (1961).

7. See CURRAN, TRENDS IN CONSUMER CREDIT LEGISLATION (1965).

8. Indiana and the majority of the states have accepted this distinction. Robrock v. Ditzler, 13 Ind. App. 332, 47 N.E.2d 163 (1943) ; Porter v. Stolkin, 101 Ind. App. 705, 200 N.E. 74 (1936) ; Stevens v. Grossman, 100 Ind. App. 417, 196 N.E. 123 (1935) ; Annot. 14 A.L.R. 3d 1065 (1967).

Furthermore, the multiplicity of regulations issued in each state tended to segment the markets further. With each state having its own body of laws and regulations, competition in the market was in effect replaced by competition in the halls of the legislature and in the offices of the regulators. Another side effect was that the consumer credit industry as a whole became subject to price regulation in effect. American society has relied predominantly upon competition in the market place as the most desirable method of protecting the consumer. Therefore, one of the major concerns today is to return to the competitive market as the primary safeguard of the consumer against overreaching and fraudulent practices.

The current segmentation of the market has led to the presentation to the average consumer of a confusing mass of data which he is unable to understand or assimilate. Even within the same credit-extending institution it is often impossible for him to ascertain or know the best method of obtaining credit in light of his particular circumstances. Therefore, it is imperative at this time that efforts be immediately directed toward the development of sound, fundamental statutes governing the consumer credit industry. These efforts can be achieved most rapidly and effectively by cooperative action on the part of federal and state governments with both accepting some responsibility for improving the current situation.

The goal of this legislative reform must be the development of more appropriate methods of protecting the consumer who becomes a party to a consumer credit transaction. Primary attention should be focused on making the credit market more perfectly competitive by requiring full disclosure of credit terms, by educating consumers for more intelligent use of credit, and by placing the credit extender and the consumer on a more nearly equal bargaining level. Necessarily, attention also must be directed to the prevention of undesirable practices by certain creditors who overcharge for credit, impose harsh contracts on consumers, and employ questionable collection devices in the event of default by the debtor.

Additional piecemeal legislation cannot solve the complex problems involved, but we should strive toward the development of a rational legal structure providing the maximum amount of consumer protection and simultaneously avoiding undue restrictions on the industry. Obviously, placing burdensome requirements on the industry will be reflected in the price at which credit is extended to the consumer. Therefore, consumers must understand, and I believe they do understand, that some balance in the legislative approach is essential if all consumers are to be served. Furthermore, legislation should not impede the development of new technologies and practices applicable to consumer credit transactions and beneficial to both the consumer and the industry.

The National Conference of Commissioners on Uniform State Laws established a Special Committee on Retail Installment Sales, Consumer Credit, Small Loans, and Usury in 1963. Since that time the Special Committee has worked diligently toward the development of comprehensive legislation providing consumer protection in all aspects of consumer credit for enactment by the several states. At the same time, Congress has addressed its attention to the consumer credit situation, and on May 29, 1968, President Johnson signed the Consumer Credit Protection Act.[9] The federal act is predominantly a "truth-in-lending" measure, requiring disclosure of the annual percentage rate of any finance charge in a consumer credit transaction. However, the federal act also includes limitations on advertising and limitations on the use of garnishment in connection with consumer credit transactions.

The entry of the United States Government into the consumer credit field raises the problem of the impact of the federal law on existing and future state legislation dealing with consumer credit transactions. The federal Consumer Credit Protection Act contains a provision to the effect that it does not annul, alter, or affect the laws of the states except to the extent that they are inconsistent with the provisions of the federal act. This means, of course, that several states must carefully review their existing legislation in order to avoid the imposition of additional burdens upon credit suppliers. It would be unfortunate if creditors had to provide two types of information, one based upon state law and the other based upon federal law. In addition, the federal legislation authorizes the Federal Reserve Board to exempt from the requirements of the federal legislation any class of credit transactions which it determines are subject to a state law which requires disclosure substantially similar to that required by the federal legislation. The federal legislation is to become effective July 1, 1969, thereby affording the states a limited opportunity to enact comprehensive legislation in the consumer credit area before the federal legislation is effective.

The federal legislation has emphasized the disclosure feature of consumer credit transactions and to this date the major public discussions in this area have been confined predominantly to the truth-in-leading problem. However, the National Conference of Commissioners on Uniform State Laws has recognized from the inception of its project that sound consumer credit legislation should embrace three separate, although integrated, elements of the typical consumer credit transaction.

9. Pub. L. No. 90-321 (May 22, 1968).

First, sound legislation should govern the conduct of a potential creditor toward the consumer before the credit transaction is finalized. Primary attention in this area should be focused upon prohibiting false advertising, requiring adequate disclosure of the terms of the credit transaction, and the prevention of certain selling practices that are objectionable or abusive. Second, sound consumer credit legislation should deal with the terms of the credit transaction itself by precluding certain contract provisions that are unduly onerous to debtors, by controlling maximum charges for credit where competition is insufficient to protect the borrower, and by imposing statutory requirements with respect to certain contract terms. Third, sound consumer credit legislation should govern the conduct of the debtor and the creditor toward each other, or their property, after the credit transaction, particularly after default in the performance of the contract.

The disclosure of adequate information concerning the credit transaction is useful to the consumer for two purposes. First, the consumer should have adequate, detailed information so that he will be able to judge whether an extension of credit is worth the price he must pay for it. Therefore, the dollar cost of the credit extension should be disclosed. Second, the consumer should have sufficient information regarding the total cost of the extension of credit so that he can shop effectively for credit among the competing credit-granting organizations. If reliance upon a competitive system is to be utilized to ascertain the price of credit, it is absolutely essential that the consumer understand the choices that are available to him. As I have indicated previously, various elements of the industry have developed their own standard practices with respect to the type of credit extended. Therefore, the consumer has various sources of credit available but the information that he receives from them is not comparable. For example, in the area of vendor credit, even within the same store the consumer may have to choose between two possible credit devices. He may be able to use a revolving charge account with respect to which he is told that he will have to pay 1½% on the unpaid balance each month. Alternately, with respect to big ticket items, he may be afforded an opportunity to purchase the goods on a retail installments sales contract in which he is told that the cost of credit will be $13 per hundred per annum. For example, on a $300 refrigerator he will be told that the finance charge will be $39 if the contract is to be paid out in 12 equal installments. The effective *annual interest rate* in the case of the retail installment sales contract is approximately 23%, whereas the revolving charge account annual rate of the reovlving credit charge is difficult of ascertainment because of the variables that may occur as the consumer makes monthly payments.

If the consumer goes to the banking institution to borrow the money to purchase the goods, three separate devices may also be used. One bank may have him execute a note for $300 with 7% interest to be repaid in a lump sum at the end of one year. If the bank does not add any additional service charges, the effective annual rate is 7% in that instance. The typical consumer, however, is not likely to be able to borrow on a single installment basis. Therefore, commerical banks require installment payments and discount in advance. With a $300 loan with the 7% discount rate the consumer will actually receive only $279 in cash. If the loan is repaid in 12 monthly installments the 7% discount rate yields 13.6%. Other banks may use a 7% add-on rate for the $300 loan to be repaid in 12 monthly installments, in which case the yield is 12.7%.

Clearly, in this type of situation the average consumer has a difficult time ascertaining which is the best arrangement for him. The problem is even more complex when we consider that each of these institutions may, for different purposes, add special charges of one type or another, such as for credit investigations, various filing and recording fees, and other additional charges, and some may require the purchase of credit life insurance while others may not. Obviously, to shop effectively for credit, the consumer must be given a comparative shopping guide, and to this date the most desirable guide from the standpoint of the consumer is the disclosure of the cost of credit in terms of an annual percentage rate.

The disclosure of the annual percentage rate in the case of revolving charge accounts causes the most difficulty. By its very nature, the revolving charge account is extremely variable because the effective rate of interest actually charged depends upon performance under the terms of the agreement. Moreover, different vendors use different methods of determining when the typical 1½% monthly charge on the unpaid balance will be made. For example, some institutions provide 30 or even 60 days of free credit before the imposition of the charge. Others, however, make the 1½% monthly charge on the opening balance. Furthermore, the consumer may pay his bills at different times of the month, and therefore this affects the totality of the charges. A study reveals that a 1½% charge placed on typical accounts may result in an annual interest rate all the way from 10% to 20% although nominally we would expect an 18% figure to result. In fact, almost 80% of the accounts covered in the study have annual rates under 18%.[10] Therefore, vendors have opposed any legislation that would require them to

10. See Jordan & Warren, *Disclosure of Finance Charges: A Rationale*, 64 MICH. L. REV. 1285 (1966).

disclose an 18% annual rate because they feel that it requires them to disclose an untruthful figure. Despite these objections, the exemption of revolving credit from the annual percentage rate disclosure law would remove a major source of credit from the disclosure requirements and this would handicap the consumer in ascertaining the best credit source available to him. Neither the federal Consumer Credit Protection Act nor the Uniform Consumer Credit Code exempt revolving credit plans.

Not only should effective consumer legislation cover annual rate disclosure, but it should also control advertising of credit terms. False or misleading advertising concerning the terms and conditions of a credit transaction should be prohibited. If advertising by credit extenders includes a rate, it should be advertised in terms of the annual percentage rate that is required to be disclosed. Similarly, if a credit extender gives examples of dollars amount of his credit service charges, the annual percentage rate should also be disclosed in the advertisement. Regulation of advertising is essential if informed consumer shopping is to be realized because consumers are likely to rely on advertising in the selection of credit institutions. The federal Consumer Credit Protection Act and the Uniform Commercial Code, therefore, contain provisions regulating credit advertisements.

With respect to the terms of the consumer credit transaction itself, obviously of fundamental concern is the nature of any legal limitation, if any, that is to be placed upon the charges for the extenison of credit. As indicated previously, at the present time the states have a confusing array of limitations upon rates that may be charged for extensions of credit made by various types of lenders and vendors. If reliance is to be placed upon the competitive market as the best protective device for the consumer, further segmentation of the market by special interest legislation should be avoided. The Uniform Consumer Credit Code, developed by the Commissioners on Uniform State Laws, frankly recognizes the inadequacy of the existing usury legislation as a protective device for consumers. The ordinary usury prohibitions have been and remain a myth due to the large number of statutory exceptions and judicial exceptions evolved in applying usury legislation. However, the abandonment of usury legislation will be a difficult task for the legislatures. The 6% usury statute has been politically comfortable, even though, in reality, it has afforded no protection to the public. Not only has the public not been protected, but many financial institutions are operating under severe handicaps because of the possible cloud of illegality upon a variety of their transactions. Therefore, in Uniform Consumer Credit Code the Commisisoners have taken the position that rate ceilings should not be so designed as to provide the effective rate. Contrariwise, the

Commissioners' Special Committee has recommended that rate ceilings be established at a high level with competition being relied upon to bring rates below these levels rather than establishing rate ceilings as a form of price control. Adequate legislation dealing with disclosure and advertising should improve the credit market, making it more competitive. However, educational programs for consumers admittedly will be necessary before we can expect consumers to utilize the disclosed information in making market decisions.

Generally speaking, the Uniform Consumer Credit Code proposes the imposition of an 18% rate ceiling with higher rates, up to 36%, being authorized in the case of sales or loans involving smaller extensions of credit. The reason for allowing higher charges in the case of smaller amounts of credit extension is the fact that placing a credit transaction on the books is quite costly in relation to costs incurred once the contract is operational. For example, a study of commercial banks reveals an average acquisition cost of $17.47 for a loan and a 96 cent monthly processing cost. In addition, if unrealistically low rate ceilings are imposed, the consumer, particularly the consumer with relatively low income, will be forced to rely upon loan shark racketeers to provide him with funds in necessitous circumstances. Although major reliance under the Code would be placed upon competition to determine the cost of money, the Code does include high ceiling rate limitations because in certain types of situations, particularly those involving high credit risk, it is improbable that consumers can be adequately protected if all rate ceilings were removed. Whatever ceilings are established, they should be comprehensive and govern both credit loans and credit sales, thereby avoiding the current pattern in many states in which rate limitations do not apply to some kinds of consumer credit transactions or different rate ceilings apply depending on the nature of the transaction.

A member of the Commissioners' Advisory Committee representing organized labor recently reported:

> "The objective of fostering maximum competition within the consumer credit field is sound, and in keeping with our traditions. The decision to establish maximum rate ceilings—though perhaps not ideal from an economic point of view—is nevertheless imperative from a practical point of view. In its long range objective to obtain the best possible consumer protection for its membership, organized labor's policy has not overlooked its responsibility to insure the availability of credit to all of its members. Recent research of the relationship between rates and the availability of consumer loans, for example, has brought out the fact that for several years over half of the applicants are being rejected by consumer finance companies. It is important, therefore, in my opinion, to set the rate ceiling

at a workable level so that it will operate to exclude only the smallest possible number of creditworthy families from the use of consumer credit."[11]

In addition to replacing general rate limitations, limitations should be placed on extraordinary charges permitted during the period after the transaction is finalized. For example, limitations should be placed on deferral, refinancing, and consolidation charges. In this area, abuse often occurs when the consumer finds that it is impossible for him to make an installment payment according to the original schedule. Some states place no limitations upon those charges today with the result that unreasonable, extortionate charges can be made in the event of a minor default on the part of the consumer.

Sound legislation should also prescribe that the consumer may repay the unpaid balance in advance and that he be entitled to a rebate of the unearned porition of the consumer credit charge. Additionally, the use of multiple consumer transactions in order to obtain a higher rate of credit service charge should be prohibited. The use of consumer credit contracts involving so-called "balloon" payments where the final installment is unusually large should be discouraged or in effect prohibited by granting the consumer the right to refinance the amount of any balloon payment on terms no less favorable than those granted in the original contract.

Problems arising out of the use of negotiable promissory notes as a part of a consumer credit sale also should be corrected by legislation. At the present time, creditors often transfer negotiable instruments to third persons who, under commercial law doctrines hold the negotiable instruments as holders in due course. The transferee often is able to sue to collect the obligation even though the consumer has not received the goods contracted for, or the goods are fraudulently represented or are defective. Two possible devices to correct the situation might be utilized. First, the use of negotiable instruments in conjunction with consumer credit sales might be outlawed so that the transferee would take the instrument subject to any defense available to the consumer. The theory of this approach is that the transferee of consumer credit obligations is in a better position to police unscrupulous creditors than is the consumer. In fact, many transferees of negotiable instruments today do that policing even though under the law they would be entitled to sue for the obligation. The second possible approach would be to require that notice be given to the consumer upon the transfer of the paper and that the

11. Statement of Robert C. Mayer to Special Committee on Retail Installment Sales, Consumer Credit, Small Loans, and Usury, National Conference of Commissioners on Uniform State Laws, January 26, 1968.

consumer be afforded a reasonable period of time within which he might notify the transferee that he has a defense.

With respect to specific sales practices, sound consumer credit legislation should deal with the device known as referral sales. Often sellers of goods will indicate to the consumer that the consumer will be given a rebate or a discount if the consumer provides him with the names of prospective purchasers. The consumer is led to believe that the price of the goods will be substantially reduced because of the subsequent sales by the vendors to other possible purchasers. Obviously, this device is subject to the same criticism as the chain letter racket. Therefore, the utilization of the referral technique should be prohibited wherever the rebate or discount is contingent upon the event occurring after the transaction.

Another contract limitation designed to avoid abuse is one that would place a restriction upon the recovery of attorney's fees in the event of default. A limitation should be placed upon the amount of the attorney's fees that may be charged to the consumer upon default, and no attorney's fees should be collectible if the attorney is a salaried employee of the vendor or lender. Finally, the utilization of confession of judgment clauses in consumer credit transactions should be prohibited.[12]

A very special problem arises in connection with door-to-door sales. Some door-to-door slaesmen employ exceptionally aggressive sales techniques and cause considerable difficulties to consumer groups. Housewives often find themselves in the position of having signed a contract for the purchase of goods without having had an adequate opportunity to analyze fully the entire transaction or without having had the opportunity to discuss the situation with their spouses. However, many door-to-door sales activities are carried on by legitimate operators and there is no evidence that they engage in overreaching. The Uniform Consumer Credit Code currently contains a provision to the effect that the consumer must be given a notice that he has an opportunity to cancel the contract arising out of a solicitation in the home for a period of 48 hours. At the present time, some door-to-door sales organizations do provide this opportunity to the consumer. Congress has under consideration a similar type of legislative approach to the door-to-door sales problem. However, legitimate operators effectively argue that their sales activities should not be subject to special limitations any more than activities occurring in ordinary places of business. Obviously, aggressive sales techniques can be employed in a place of business as well as in the

12. The cognovit note has long been considered to be void in Indiana. IND. ANN. STAT. § 2-2906 (1968); Fodor v. Popp, 93 Ind. App. 429, 178 N.E. 695 (1931).

consumer's home. However, because of the large numer of special abuses reported, it now appears advisable to place some type of limitation on home solicitation sales so that the consumer has an opportunity to review his decision without the pressure of the salesman's presence in his home.

In recent years, the utilization of credit life and credit health and accident insurance has increased remarkably. Unfortunately, this type of insurance raises specialized problems because of its inverse competitive nature. By that I mean that creditors, selling the insurance in conjunction with a credit transaction, have no incentive to purchase this insurance at the lowest possible cost. The reason for this is that they are given commissions or rebates under the group credit insurance policies depending upon their rating experience. If the rate charged for the insurance is high, the amount of the rebate is greater and therefore the creditor is inclined to use more expensive insurance where the rebates would be higher. Many states have already adopted regulatory measures in the consumer credit insurance area, but it is absolutely essential that energetic enforcement of those laws be undertaken. If states do not have adequate legislation today, insurance commissioners should be authorized to provide rate control over credit-related insurances. In addition, creditors should not be authorized to contract and receive charges for insurance which as a whole make the transaction unconscionable. Finally, unreasonable types of insurance coverage, such as insurance against damage by elephants, should not be authorized in connection wtih consumer credit transations.

To turn now to the abuses that arise in conjunction with the relationships between creditors and debtors after the default, additional legislation is necessary to provide more adequate protection to consumers. At the present time, many creditors take possession of the collateral on default, sell the property, and thereafter obtain deficiency judgments and require the debtor to pay the deficiency. Sales of tangible personal property at auction or by private sale bring notoriously low prices, and in the current situation the creditor does not have the incentive to obtain the best possible price. Therefore, in relation to items of relatively small amounts of value, it is desirable that legislation limit the creditor's remedy to either taking possession of the collateral *or* seeking a deficiency judgment, but not to give him both remedies.

The use of garnishments in connection with the enforcement of consumer credit obligations has caused considerable difficulty. In the first place, the service of the garnishment upon the employer has often resulted in the discharge of the consumer employee. Second, the exemptions from garnishment in most states are hopelessly outdated.[13] In many states the same exemptions exist in term of dollar amounts that existed prior to World War I. At that time, the dollar exemption immunized a substantial portion of earnings from garnishment. Inflation and higher wages have meant that an increasing amount of the wages is subject to garnishment process. To correct these problems, sound state legislation should prohibit discharge of employees because of wage garnishment. Furthermore, garnishment should not be authorized unless the creditor has obtained a judgment against the debtor.[14] Finally, the exemptions from garnishment should be substantially increased. The federal Consumer Credit Protection Act provides that the maximum amount of disposable earnings that may be reached by garnishment is 25% of the disposable weekly earnings or the amount of earnings over 30 times the minimum hourly wages, whichever is less.[15] These restrictions do not apply in connection with garnishments involving support orders, bankruptcy orders, or debts for any state or federal tax. State laws prohibiting garnishment or providing greater exemptions are not affected by the federal act. The state, therefore, should proceed to provide realistic garnishment exemptions and to prohibit the discharge of an employee because his earnings have been subjected to garnishment.[16]

The adoption of state consumer credit legislation along the lines suggested above should be supplemented by the establishment of adequate administrative machinery at the state level to supervise the consumer credit industry. Therefore, each state should establish an office of consumer credit administrator with powers to seek refunds of overcharges and to collect penalties in the event that adequate disclosure to consumers is not given. Private civil remedies should remain available, but it must be recognized that private litigation is not a satisfactory solution when dealing with relatively small sums of money. The grant of broad powers to the administrator to investigate unlawful practices and to issue cease-and-desist orders with respect to unlawful practices would be of material assistance to consumers. If necessary, the administrator should be able to obtain injunctions in the courts to avoid credit abuses.

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13. Indiana currently allows the judgment debtor to garnish 10% of all weekly wages in excess of $15.00. Ind. Ann. Stat. § 2-3501 (1968).

14. Indiana authorizes the use of garnishment in proceedings supplemental to obtain satisfaction of a judgment, Ind. Ann. Stat. § 2-3501 (1968), and at the time of filing an action for the recovery of money. Ind. Ann. Stat. §§ 3-501 to -506 (1968).

15. Consumer Credit Protection Act, Pub. L. No. 90-321, § 202(a) (May 22, 1968).

16. *Id.* Section 203 prohibits termination of an employee by reason of a single occasion of garnishment.

Obtaining enactment of legislation containing the provisions outlined above will not be an easy task. In the first place, various industry groups may oppose the fundamental concepts involved because they oppose opening the door to competition not only within their individual segment of the industry but also as among the various segments of the consumer credit industry. As one industry segment reported to the Commissioners:

> ". . . [The] industry must actively oppose adoption of the Code in each and every state until and unless the Code is amended so as to preserve the historical and delicately balanced relationship of the various types of lenders under the differing laws of the various states."

Second, consumer groups may feel that the legislation is not sufficiently protective and may desire more stringent regulation of the industry and areas of abuse. Third, others reflecting the increasing tendency in the United States to turn to Congress for the resolution of all outstanding social problems may oppose state solutions to credit problems. For example, one public organization reported to the Commissioners:

> ". . . Unless . . . essential changes are made . . . , it will be necessary to advise our membership that the Code is seriously deficient in its response to consumer needs. . . .
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> "It would appear that failure to remedy these deficiencies would invite further federal entry in the total field of consumer credit. Such entry might well be desirable from the viewpoint of the consumer who has waited long years for adequate relief of his problems in this field. It is obvious that Congress is capable of acting with much greater speed in the enactment of consumer legislation which affects citizens in all 50 states. Although enactment of a Uniform Code on a state by state basis may have advantages, it will require more time. Also passage is likely to be delayed in various states where change in the law is most needed."

Therefore, the Uniform Consumer Credit Code faces the potential opposition in state legislative halls of both industrial and consumer groups. This would be an unfortunate result that can be avoided only by a more objective and informed approach to the resolution of the basic problem areas where there are disagreements.

Lawyers have the responsibility of undertaking a careful review of the provisions of the Uniform Consumer Credit Code promulgated by the Commissioners on Uniform State Laws. Only if the legal profession understands its provisions and recognizes the fundamental problems involved will it be possible for the states to be responsive to the current needs. Obviously, it will be impossible to serve all individual and group needs and desires. Therefore, it is essential that the legislation be reviewed as a whole in terms of its positive and negative features as viewed from the standpoint of the various interests. Hopefully, lawyers throughout the United States will give the Uniform Consumer Credit Code the objective study that it deserves. Otherwise, the present crazy-quilt pattern of legislation will continue or reform movements will rely upon the United States Congress. The result inevitably, in my opinion, would be that another large area of the law will be governed by federal legislation.

The adoption of uniform state legislation dealing with this subject is the preferable approach. Already the states have a substantial body of law on the books, and it is essential that many of the features of consumer credit legislation be integrated with other bodies of commercial law. Although the federal government has provided some protection to credit users, other protections for the consumer are desirable today. The states should be given a reasonable time to respond to the necessities of the situation, and if adequate response is not obtained, the federal government should be encouraged to provide additional consumer protection. I am hopeful that the adoption of the federal Consumer Credit Protection Act will provide the substantial impetus necessary to stir activity on the part of the states to adopt the Uniform Consumer Credit Code. Lawyers can assist in creating understanding of the need for legislative reform in this area and urge enactment of sound legislation. Unquestionably, the major responsibility for the development of consumer protective devices lies within the legislative arena. Lawyers must play an active role in legislative processes if they are to share responsibility for the standards of conduct prescribed by law in the future.

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