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THE PLIGHT OF THE CONSUMER IN THE UNIFORM CONSUMER CREDIT CODE*

BY NEIL O. LITTLEFIELD**

The Uniform Consumer Credit Code (UCCC) has been introduced in a number of 1971 state legislative sessions including the past Colorado legislative session. We have asked Professor Neil O. Littlefield of the University of Denver College of Law and L. Richard Freese, Jr., Esq., a partner in the Denver law firm of Davis, Graham & Stubbs, to address themselves, in terms of an overview, to issues now being raised in many state legislatures relative to the UCCC. Our intention is to present two commentaries which reflect very different experiences with the UCCC and the legislative considerations surrounding it. Professor Littlefield has identified himself with those who feel the UCCC should contain more restrictions on creditors' rights and remedies. Mr. Freese's experience with the UCCC has been as an attorney for those engaged in the business of extending credit. In order to create a dialogue between Professor Littlefield and Mr. Freese, we have asked that they direct their comments to five areas: (1) whether the UCCC should be a "uniform" act; (2) whether the UCCC has caused a polarization of attitudes; (3) whether there is effective relief for violations of the provisions of the UCCC; (4) whether the UCCC's limitations on creditors' rights and remedies should be more stringent; and (5) whether the UCCC position on rates is sound.

INTRODUCTION

RECENT legislative battles over consumer credit legislation have revolved around the controversial Uniform Consumer Credit Code. This author gladly accepted the invitation to participate in a dialogue with Mr. Freese on the broad questions of the place of the UCCC in the active consumerism of the seventies. Hopefully, we can learn something from an attempt to view the process as a whole, even if such a view is distorted by the particular experiences which Mr. Freese and I have undergone. This author admits to a predisposition for legislation which drastically alters the relative positions of the consumer and industry. In this sense, what follows is an attempt to articulate the various factors which it is believed would influence others toward a similar position. The effort is to state the arguments without the sacrifice of intellectual integrity which would follow from denying the strength of opposing arguments or the difficulty of fashioning reasonable alternatives which suggest that a more moderate change is dictated.

* The author wishes to express his gratitude to Donald Lojek for his help in the preparation of this article.

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I. THE PROBLEM OF UNIFORMITY

It is naive to measure the success or failure of a uniform act by the timing of its adoption by state legislatures. The most successful of the recent uniform acts was promulgated in 1951, and 6 years passed before Massachusetts followed Pennsylvania's precipitate adoption of the Uniform Commercial Code.[1] While it is pretentious to say that the Act was known to be a success in the early years, it is possible to state that it was under serious consideration as a uniform act. During the early fifties, there was a process taking place which at that time could have been characterized as leading to success.[2] There was little serious fight with the basic assumption that a comprehensive and uniform redrafting of the commercial law of the states was overdue. However, it does not seem realistic at this writing to credit the Uniform Consumer Credit Code with any chance of success as a *uniform* act. This deliberate statement is made with the knowledge that the process of drafting a uniform act may necessitate a significant redrafting. Already the Special Committee of the National Conference of Commissioners on Uniform State Laws[3] is studying the draft of the National Consumer Act and might redraft the present Uniform Act in accordance with some of its objections.[4] But there are considerations aside from this which doom the entire project.

The National Commissioners have understandably been concerned with the criteria of uniformity throughout their history. The conference's constitution provides that the object of the conference shall be "to promote uniformity in state laws on all subjects where uniformity is deemed desirable and practicable."[5] The conference is aware of the two-pronged character

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[1] Massachusetts adopted the Uniform Commercial Code on September 21, 1957, effective October 1, 1958. MASS. ANN. LAWS, ch. 106 (1957). For the early history of the drafting, redrafting, and adoption of the UCC, see Braucher, *Legislative History of the U.C.C.*, 58 COLUM. L. REV. 798 (1958).

[2] In contrast with the present struggle over the UCCC, it was quite evident that during the early fifties there was a continual process to determine what version of the UCC would stand the best chance in all state legislatures. The most evident indications of this process were activities of the Uniform Commissioners at the hearings of the New York Law Revisions Commision in 1955-56, and the prompt amendment of the Pennsylvania version of the UCC after the appearance of the 1957 *UCC Official Text;* Braucher, *supra,* note 1.

[3] The full title of this committee is the Special Committee on Retail Installment Sales, Consumer Credit, Small Loans and Usury, and will be referred to hereinafter as the Special Committee.

[4] *See* Memorandum to UCCC Committee and Staff, Re: The National Consumer Act, by W. D. Warren, (mimeo, limited distribution, Feb. 7, 1970).

[5] *Id.* at 200.

of this principle: that the uniformity be both desirable and practical. A permanent subcommittee of the Executive Committee[6] has been assigned the task of developing from time to time criteria for uniformity. These criteria are stated in "Recommendations as to Character and Considerations of Acts." In the 1969 Handbook, the following positive criteria are listed:

1. Obvious reason and demand for an act on the subject such that its preparation will be a practical step toward uniformity of state law.
2. Reasonable probability that the act will be enacted by a substantial number of jurisdictions.
3. The subject of the act should be such that lack of uniformity . . . will tend to mislead, prejudice, inconvenience or otherwise adversely affect the citizens of the states in their activities or dealings in other states or with citizens of other states or in moving from state to state.[7]

In addition, there are three negative criteria. The subject matter should not be:

1. entirely novel,
2. controversial, or
3. of purely local or state concern.[8]

The criteria set out in the Handbook provide a reasonable statement of the factors governing the need for uniformity. Presumably, if a proposed law meets these tests then it is fair game for the commission. Yet there is nothing in the history of the UCCC to indicate that the Handbook criteria were ever applied. The commission appears to have undertaken the process of drafting legislation without even considering the propriety of acting in this area.

In 1959, the Special Committee on Uniform Retail Installment Sales Finance Act reported that they had drafted a first tentative draft, had invited extensive comment, and recommended that the subject is "appropriate for Conference action in the form of a Model Act rather than a Uniform Act."[9] However, there is no record of what happened to the 1959 Special Committee's recommendation to drop the project as a uniform act. This lack of information seems to suggest the unfortunate

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[6] This subcommittee is denominated the Committee on Scope and Program.

[7] HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 226-27 (1969) [hereinafter cited as HANDBOOK].

[8] *Id.* at 227-28.

[9] HANDBOOK, *supra* note 7, at 206 (1959).

conclusion that the important question of whether consumer credit was the proper subject of a uniform act was passed by default.

In 1961, the Special Committee on Uniform Retail Installment Sales was discharged and a reconstituted Committee on Cooperation with the American Bar Association Study of Retail Credit Legislation took its place. In 1963, the Executive Committee heard the report of the Committee on Cooperation and established its Special Committee on Retail Installment Sales, Consumer Credit, Small Loans and Usury and gave it instructions to draft legislation in the consumer credit field.[10] It is perhaps noteworthy that in this committee's 40 page report to the conference in 1965, there was much discussion of the need for consumer credit legislation, but no consideration of the important question as to whether such legislation need be, should be, or had a reasonable prospect of success as uniform legislation. The committee made a very good case for the fact that the subject matter is timely, nothing more.

Rather belatedly, the committee made a statement as to the need for uniformity. In the Prefatory Note to the November 1968 Revised Final Draft of the UCCC, the committee included a short statement entitled "Uniform Legislation Desirable."

> The Special Committee believes that consumer credit legislation should be uniform among the states. Uniform laws on the subject will benefit both the consumer and the consumer credit industry.
>
> Consumer understanding of credit transactions and of alternative sources of consumer credit is a primary essential for the effective operation of both consumer credit laws and of the forces of competition in consumer credit extensions. The mobility of our people makes uniformity of State consumer credit laws a prerequisite for maximum consumer understanding.
>
> The extent to which segments of the consumer credit industry operate across State lines makes uniformity of consumer credit laws desirable to facilitate and to reduce the costs of their interstate operations, and thus to promote competition and so ultimately to reduce the costs to the consumer on credit extensions.[11]

Analysis of this statement reveals its simplicity and self-conclusionary nature. One would perhaps dismiss the above discussion as a rather academic argument were it not for other considerations.

A basic obligation of each uniform commissioner is to promote uniformity of state enactment of conference promulgated

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[10] HANDBOOK, *supra* note 7, at 134 (1963).

[11] UNIFORM CONSUMER CREDIT CODE OFFICIAL TEXT WITH COMMENTS XXI (1969). References throughout this article are to the OFFICIAL TEXT.

uniform acts. Presidential addresses to the conference repeatedly include exhortations as to this prime mission of the commissioners in their individual states. "Finally the Commission from each state must be prepared to defend the uniform act line by line under questioning by the appropriate state legislative committees."[12] Thus, the criteria discussed earlier play a substantial role in the overall success of the mission of the conference.

Several possible reasons why the National Conference chose to expend so much time and energy on drafting a uniform act without determining that it should be uniform come to mind. There is no doubt that the topic of consumer legislation is timely. It is challenging. Also, it is human to attempt to repeat success. In drafting the UCCC, the commissioners could believe that they were following in the footsteps of the drafters of the Uniform Commercial Code who received well-deserved accolades both for the magnitude of the project and the universal success of the subsequent enactments. From the report of the Subcommittee on Scope and Purposes is found this revealing statement:

> Our discussions also led us to the conclusion that the now apparent success of the Uniform Commercial Code should lead us to attempt to unify other large branches of private law. . . . Eventually, it is our hope that this [American Bar Foundation study of consumer credit] will lead to the development of uniform legislation dealing with an additional number of commercial law problems in the areas of retail installment sales, usury, revolving credit, etc.[13]

Since the National Conference has left us no substantive record why the Consumer Credit Code should be a uniform act, it is not too late to examine the question on its own merits. This is so especially in light of the fact that state legislatures considering the adoption of the UCCC are being requested to honor the code to the extent of enacting the uniform version.[14]

As an initial step towards this inquiry, it is important to distinguish between the notion of uniformity of laws between the various states and the notion of unification of law within a state. It has been repeatedly urged, in the context of the UCCC, that the consumer credit laws of the several states present a hodge-podge of statutes, dealing variously with small loans, retail installment sales of consumer goods, retail installment sales of automobiles, and diverse types of credit granting

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[12] HANDBOOK, *supra* note 7, at 56.

[13] *Id.* at 66-67.

[14] The author's personal experience with the UCCC in Connecticut in 1969 convinced him of a strong drive for uniformity. The chief proponent was a uniform commissioner who resisted all efforts to amend the uniform version in any respect.

institutions. It is further urged that from this fact one is led to desire the UCCC because it presents a single act covering the basics of the functional phenomena associated with consumer credit. However, the reasons which suggest that commercial law should be codified in one act are not the same reasons which suggest that commercial law should be uniform from state to state. The question of uniformity must be discussed independently unless it can be shown that the unification of consumer credit laws is somehow related to the uniformity of consumer credit laws from state to state. No case has been made for such an interdependence and no such case can be made.

In a perusal of the fast-growing literature of the UCCC there has been found only one serious discussion of the need or desirability of uniformity in the consumer credit field.[15] The article was by Mr. Felsenfeld and included discussions on the topics of "The Case For Uniformity"[16] and "A Case Against Uniformity."[17] The analysis is a respectable one, and it is fortunate that he considered the basic question important enough to give it serious treatment. Although it would be superfluous to repeat his statement here, a brief summation is necessary in order to complete this presentation.

Felsenfeld starts with the classic statement of Professor Dunham, then Executive Director of the National Conference of Commissioners of Uniform State Laws, who articulates five major reasons for uniformity.[18] I agree with Felsenfeld in his conclusion that of these five reasons for uniformity, only three of them are persuasive with respect to the uniformity of consumer credit legislation. Felsenfeld gives prime importance to Professor Dunham's fourth reason, namely: "Uniform laws through the educative function of law, will tend to promote uniformity in attitude and ethical conduct."[19] Felsenfeld translates this advantage as follows: "... the increased likelihood that the nation will understand and comply with the law."[20] Under present law, he continues, "... there is no valid consumer folklore, or instinctive understanding, of what one's rights, benefits

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[15] Felsenfeld, *Uniform, Uniformed and Unitary Laws Regulating Consumer Credit,* 37 FORDHAM L. REV. 209 (1968) [hereinafter cited as Felsenfeld].

[16] *Id.* 221-31.

[17] *Id.* 231-36.

[18] Dunham, *A History of the National Conference of Commissioners on Uniform State Laws,* 30 LAW & CONTEMP. PROB. 233 (1965) [hereinafter cited as Dunham]; Felsenfeld, *supra* note 15, at 222.

[19] Felsenfeld, *supra* note 15, at 222, 236.

[20] *Id.* at 223.

and problems are in obtaining credit."[21] Felsenfeld also applies Professor Dunham's principle that if there is a proper solution it ought to be a uniform solution. In other words, this argument for uniformity proceeds on the principle that a well-drafted, well-reasoned act ought to be good for any state that wishes to legislate in the area. Finally, Felsenfeld sees some slight strengthening of the federal system when states adopt uniform legislation thus rendering federal legislative incursions into a field of state concern unnecessary.[22]

The argument that uniform consumer credit laws might tend to create uniform attitudes towards the use of credit and the rights and advantages which a credit user has is perhaps the most salient argument in favor of uniform legislation. The problem with that argument is that its assumption, to my knowledge, is unproven. There are no empirical studies in this area suggesting that people throughout the nation adopt a "folklore" where laws are uniform. The Federal Income Tax Law, largely self-administered and quite successful, might demonstrate Felsenfeld's point. On the other hand, the uniformity of regulation with respect to small loans might not provide an appropriate example of "consumer folklore," and this example is much more analogous to the problem under discussion. It might be interesting to see a good sociological investigation of common understandings among borrowers from Household Finance or other national lending institutions.

Professor Dunham's thesis that a good law should be uniform simply because it is good is not of general application.[23] Where a state problem is prevalent in all states, where state legislators agree on the evils to be remedied, and where there is general agreement that the problem is one of finding a workable solution, then this argument has merit, otherwise not. This argument for uniformity perhaps explains the success of the Uniform Gift to Minors Act which has been adopted in 50 jurisdictions.[24] The best argument for uniformity with respect to this Act is that a common problem existed in all states, and that one well-drafted solution would serve as well as another, hence, the uniform adoption.

One might wish to use the Uniform Commercial Code as an

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[21] *Id.*

[22] Obviously, this short restatement of Mr. Felsenfeld's case for uniformity is no substitute for his own articulation.

[23] Dunham, *supra* note 18, at 237.

[24] HANDBOOK, *supra* note 7, Chart of Adoptions on Uniform Law, 193 (1969).

example of uniform act which was enacted because it was well-drafted, represented a distinct improvement over prior law, and, therefore, it recommended itself for uniform adoption on the strength of this alone.[25] However, there appears to be a basic distinction between the regulation of consumer credit and the statement of a law of commercial transactions which is very germane to this entire discussion of uniformity of consumer credit laws. The distinction lies in the extent to which there is a very real difference of opinion, backed by interest groups of some political influence, between the alternative "good" ways to control consumer credit.[26] This is generally true of regulatory statutes, as contrasted with statutes which do not have as their prime or chief thrust the regulation of activity.[27] The difference of opinion presented by consumer credit legislation is not simply a matter of a confrontation between industry and the consumer. Differing segments of the industry have widely differing views as to the desirability, for example, of the "free entry" provisions[28] of the proposed UCCC.[29]

Is it possible that the excellence of a particular product of the Uniform Commissioners ought to make an argument for uniformity which supersedes the difficulty of getting forty or more legislatures to adopt the policy approaches found therein? This is a key question, and perhaps the differing answers to this question have caused some of the furor over the UCCC. It is difficult to state a definitive answer to this question. However, if the commissioners or other proponents wish to answer the question in the affirmative, they should in turn be ready to answer a few of the following pertinent queries. If a state has made respectable strides towards effective consumer protection, why should it backtrack even in some areas in order to adopt a

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[25] This is not to ignore the fact that the interstate character of many commercial transactions also presented a reason for uniformity.

[26] For example, there may be a real difference of opinion as to whether class actions may or may not be brought prior to administrative action.

[27] To revert to the example of the UCC, that Act is not basically regulatory. Its purpose is to set forth rules which state the rights and obligations of merchants in consensual transactions based upon their assumed intentions and reasonable expectations. Those parts of the UCC which do regulate have the greatest number of state amendments which depart from uniformity, *e.g.*, § 2-318 on liability of sellers to ultimate user for defective products and § 9-313 on priorities between holders of personal property security interests (covered by the UCC) and holders of real property security interests (not covered by the UCC); *see* Reports Nos. 1, 2, and 3 of the Permanent Editorial Board for the UCC.

[28] *See* text accompanying note 69 *infra*.

[29] Warren, *Rate Limitations and Free Entry*, 26 BUS. LAW. 855 *Passim* (1971) [hereinafter cited as Warren].

uniform version? [30] It is, of course, no answer to make the question-begging reply, *i.e.*, "in order to achieve uniform legislation." Perhaps an even more serious question is: will it strengthen state legislatures to have them exchange the usual legislative process of balancing the various interests as local pressure groups present them for a process of adopting a policy position which represents either a nationwide consensus or a nationwide lowest common denominator?

In presenting these questions as serious obstacles to uniformity of consumer credit legislation, it is not necessary to assume that conditions and practices vary from region to region or from state to state. To the contrary, even admitting the near universality of the realities and problems of consumer credit, the variation from state to state is in the public response. I am far from convinced that this variation in response is an undesirable thing. It is part of the democratic tradition. Why should not a bank lobby or a consumer lobby have its influence felt in either the halls of the state legislature or in the halls of Congress?

In conclusion, it seems that any case that can be made for uniformity is an extremely weak one. Consumer credit transactions do have interstate considerations and it would be of help to the consumer credit industry to be able to use uniform forms from state to state. However, when the consumer protection advocate is presented with a uniform act which represents a nationwide consensus (if it does even that), these arguments for uniformity do not balance with those against it. The individual consumer credit transaction is a local one. The matter of the regulation of consumer credit practices in the seventies is a question of obtaining an effective voice for the consumer. This requires convincing legislators that problems exist and that suggested solutions are appropriate and not damaging to industry. In this view of the problem, a nationally drafted act serves as a source of ideas for drafted language but not for a uniform solution. There is no demonstrable reason why the state legislatures of New York and Arkansas should each adopt a happy medium.

II. The Communications Gap

The timing of the promulgation of the UCCC produced what is appropriate to term a "communications gap" between the

[30] *See* New York City Dep't of Consumer Affairs, Report on the UCCC by the Consumers' Advisory Council (1969), which objected to those features of the UCCC which weakened existing New York law.

sponsors of the legislation and the present group of consumer protection advocates. The communications gap is evidenced by the strong negative reaction which the Code precipitated from a number of consumer groups coupled with the bewilderment felt by the sponsors that the consumers would react in such a fashion to something which was highly touted as "consumer" legislation.

It is important to remember the drafting timetable of the UCCC. The National Conference received and honored a request from the Council on State Governments in 1957 to consider the matter of legislation in the area of retail installment sales, small loans, and usury. In the early sixties, the conference decided to cooperate with the American Bar Foundation in a study of consumer credit laws.[31] In 1963, the conference appointed the Special Committee on Retail Installment Sales, Consumer Credit, Small Loans and Usury which was to begin work on the drafting of uniform legislation. In the report of this committee in 1965, the basic characteristics of the Special Committee's work is outlined. The Special Committee states that legislation should not be aimed at restricting the use of credit. "It should be designed to rid the credit industry of harmful practices of the few which reflect on the industry as a whole and to encourage or require other practices which will make the credit industry respond in a more prefect way to the forces of competition."[32]

In addition to aiding the industry's image, the same report indicates the committee's desire to protect creditors from judicial attacks on their legal foundation. "Changing judicial attitudes are threatening the legal foundations of the consumer credit industry. The time-price doctrine, which holds that finance charges in vendor-credit transactions are not interest, has been, in effect, repudiated in Arkansas and Nebraska and somewhat undermined by decisions in other states."[33]

Thus, clearly the purpose of the National Conference of Commissioners on Uniform State Laws in drafting and promulgating the UCCC was not to produce a document which protected the consumer. Rather it was a document to protect industry. That feature of the Code which was supposed to garner

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[31] The results of this study are contained in B. CURRAN, TRENDS IN CONSUMER CREDIT LEGISLATION (1965) [hereinafter cited as CURRAN].

[32] REPORT OF THE SPECIAL COMMITTEE ON RETAIL INSTALLMENT SALES, CONSUMER CREDIT, SMALL LOANS AND USURY TO THE NCCUSL, 10 (1965) (separately printed).

[33] *Id.* at 6.

consumer support was the prohibitions of "harmful practices of the few."

The sponsors of the legislation had undoubtedly anticipated certain negative reactions, such as Lester Dennon's unbending resistance to many features of the Uniform Code.[34] After all, the discussions and studies undertaken by the Special Committee of the Uniform Commissioners had indicated that certain segments of the industry were in favor of, lukewarm to, or unalterably opposed to various features of the UCCC. The Special Committee, however, did feel that the promulgated version represented a reasonable compromise of conflicting viewpoints. There was optimistic hope that the uniform version, as a compromise, would meet with success in a number of state legislatures. This hope was based partly upon an assumption that the consumer groups would be strongly in favor of the legislation. It therefore followed that the Act would have basic popular support in the legislative halls which, coupled with the compromise features, would ensure passage in a number of legislatures.

It was in this situation that the UCCC was promulgated. Actually, it was rushed to completion. If the purpose of the haste in promulgating the UCCC had been due to the fact that the drafters were aware of the militant consumer movement, perhaps the communication gaps would not have occurred. However, the reason for the commissioners' haste lay in the impending federal legislation, particularly truth-in-lending. It was intended by the Uniform Commissioners that the UCCC be ready for state legislatures so that industry in those states could comply with state law and not with federal law. In fact, at the 1968 Annual Meeting of the Uniform Commissioners, the unprecedented step was taken of approving the Final Draft of the UCCC with the Special Committee being given authority, subject to the approval of the Executive Committee, to make changes in the final draft "to conform the final draft to the exemption requirements and Regulations of the Federal Reserve Board pursuant to the Federal Consumer Credit Protection Act...."[35]

If the Code had been ready in 1965, it is possible that it would have had some success in a number of legislatures. However, by the time the Code was finally promulgated in 1968-69, the situation had changed drastically. Consumer interests were

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[34] Dennon, *The Uniform Consumer Credit Bombshell*, 22 PERSONAL FINANCE L.Q. 125 (1968).

[35] UNIFORM CONSUMER CREDIT CODE, XVIII (1969).

no longer quiet and receptive to just any legislation which might improve the consumers' lot. Ralph Nader had entered the scene. A sizeable group of young attorneys working for the Neighborhood Legal Services Project of the OEO had learned that the problems of the consumer were not due solely to the "harmful practices of the few." Consumer spokesmen began to express the view that the general practices of the industry did not adequately consider consumers' reasonable expectations. A fairly sizeable group of well-informed, capable, and concerned spokesmen for consumer groups were beginning to demand something more.

At this stage of the game the communications gap appeared. When the Uniform Commissioners went to the state legislatures in an attempt to enact the Code, they found that consumer objection was quickly building. The sponsors of the legislation felt that the consumers were talking about objectionable policy choices which the commissioners felt they had fully discussed before 1965. The proponents were eager to attempt to get enough enactments of the UCCC to forestall any more action by Congress in the consumer credit field. With these two attitudes, it is understandable that the proponents misunderstood the consumer negativism. They had no awareness of the basic assumptions of the consumer protection movement as of 1968.

Basically, the communications gap exists because the drafters of the UCCC were talking with and reacting to one group of consumer advocates at a time when a more activist group of consumer advocates was beginning to appear on the scene. The basic assumptions of this present group of consumer advocates are new. Previously, consumer legislation was actually designed to abate the excesses thought to exist on the fringes of the system. Now consumer advocates deny that what is good for General Motors is good for the consumer. If consumer legislation is to be effective it must make basic changes in the present system. This the Code does not do. The new consumer advocates are much more skilled in meeting industry objections of the type which alleged that serious harm would occur to the credit economy if significant changes were made in the law. The assumption now made by these advocates is that industry can learn to live with much more change than they would like and still make a profit. This new breed of spokesmen is also much more interested in the social costs of the present system following such landmark studies as "The Poor Pay More" by Professor David Caplovitz.[36]

[36] D. CAPLOVITZ, THE POOR PAY MORE (1967).

While it might be unfortunate, it should not have been altogether unexpected that the completely contrasting set of purposes and assumptions should have resulted in a difficulty in reaching a dialogue between those who had worked for years with the UCCC and those who have opposed it. The countercharges of an "industry sponsored bill" and of an unrealistic refusal to compromise or face facts did little to promote communication. A notable exception in this process was the effort of the National Consumer Law Center at Boston College School of Law. Under the aegis of its Director, Professor William Willier, the center produced the National Consumer Act as an alternative to the UCCC. Continuing conversations between the draftsmen of the NCA and proponents of the UCCC contributed to the present situation where the positions of the consumer advocates are more realistically evaluated by members of the industry. This present situation shows more promise of future narrowing of the communications gap in that certain segments of the industry and their spokesmen are willing to begin on the assumption that change is coming and that change is not dangerous per se. This is most evident with respect to the retail merchants' spokesmen who tend to take an attitude that consumer credit legislation to benefit all must introduce certain reforms of significance which benefit the consumer state by state.

III. Effective Relief

The consumer advocate will not support consumer credit legislation without some assurance that the consumer will have effective relief from both the abuses in the market place and disappointments in his reasonable expectations.[37] Effective relief may be public or private, but the requirement basically is that an aggrieved consumer have a realistic avenue which will recompense him for loss, protect him from further loss, and ensure that some steps will be taken to prevent the recurrence of the prohibited or loss-producing activity. Where the economic investment of the consumer in a typical consumer credit transaction is not worth the cost of a lawsuit, the general legal maxim — that there is a remedy for every wrong — offers scant consolation. Experiences with ghetto consumers in free legal service programs have demonstrated to the consumer advocate that litigation offers little hope for the consumer who earns too much to qualify for such services and too little to afford his own legal counsel.

[37] *E.g.*, Spanogle, *The UCCC — It May Look Pretty, But Is It Enforceable?*, 29 Ohio St. L. J. 624 (1968).

Neither the consumer nor his lawyer has been an active participant in the court system in the past. Throughout the years the basic interest group which has used the courts is the creditor class.[38] Procedures in the courts have been devised and perfected to permit the creditor to develop those elements of the creditor-debtor relationship which are of concern to him. Thus, the typical situation is that if a creditor has a negotiable promissory note it is a simple matter for him to file pleadings in an ordinary court of law in order to obtain a money judgment. The next step is the usual post-judgment remedies such as execution on a judgment and garnishment. For decades the courts have been trained to react in an almost Pavlovian sense to the creditor's request for a means of collecting debts.

Very often, in light of the above described system, the debtor has no effective voice. A creditor has a number of small claims actions and develops an efficient procedure for obtaining judgments. The economics of *defending* a small claims action are quite different. The debtor has no staff of attorneys, no great familiarity with the court system, and, most importantly, has not developed an effective way to assert his rights in the courts. Thus, many creditor actions result in default judgments against the debtor. It is economically unfeasible for a debtor to secure legal representation in such small claims.

If the foregoing represents a modicum of truth, then a consumer advocate's approach to the UCCC is going to be: What does the Code do for the consumer to give him a truly effective remedy? A number of features of the UCCC which were heralded as significant advances in the law of consumer credit turn out to be illusory or nonexistent changes in the system.

If, for example, one discusses the matter of the use of the negotiable instrument in consumer credit transactions, the consumer protection advocate is disappointed by the approach of the UCCC. It is well known that the use of the negotiable instrument or the waiver of defenses clause gives the creditor a strong position.[39] What is the Code reaction to this problem? It is true that section 2.403 of the Code nullifies the advantages of the use of negotiable instruments. However, in alternative B of section 2.404, the drafters of the UCCC permit assignees to

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[38] Perhaps some of the extraordinary obstacles consumer lawyers run into on their way to the courthouse account for this nonaltruism. See Schrag, *Bleak House 1968: A Report on Consumer Test Litigation*, 44 N.Y.U.L. REV. 115 (1968) for a graphic account of one lawyer's battle against the system.

[39] *See* Littlefield, *Preserving Consumer Defenses: Plugging the Loophole in the New UCCC*, 44 N.Y.U.L. REV. 272 (1968).

take an obligation free of defenses under certain circumstances. The consumer advocate who is really interested in effective consumer relief wonders why the drafters of the Code permitted even an alternative section which does this. A consumer is in a much better position if he is able to assert a defense or claim which he has against the merchant by way of refusing to make additional payments.

The UCCC equivocates again on the matter of attorneys' fees. The consumer credit contract is uniformly a "boiler-plate" contract, drafted by the creditor and imposed upon the consumer.[40] It typically includes a provision that if the creditor has to go into court to enforce his rights, then the consumer-debtor will have to pay reasonable attorneys' fees. The consumer protection advocate would be interested in seeing that the consumer had the same right. There should be an automatic provision in a consumer credit contract that if a consumer needs to bring a suit to enforce any right which he has against the creditor he can collect his attorneys' fees. It is true that section 5.202(8) of the Code provides that "in any case in which it is found that a creditor has violated this Act, the court may award reasonable attorneys' fees incurred by the debtor." This section is far from the desired rule of law allowing automatic collection of a debtor's attorneys' fees. In other words, section 5.202(8) is not equivalent to the usual creditors' term that "buyer agrees if after default this contract is placed in the hands of an attorney, to pay as attorneys' fees the maximum as shall be permitted by law."

The above examples indicate that it is *not* one of the assumptions of the UCCC to remedy any imbalance in the present system. Consumer protection advocates have a right to feel suspicious of the drafters' claim that they have compromised the interests of consumer and creditor when consumer oriented remedies are so conspicuously absent from the present draft. For example, an obvious method of effective relief for a disappointed consumer would be recission of the contract. That is, if after the consumer has taken delivery of goods he learns that they are not as promised, are excessively priced, or that his rights have been violated in some other way, his most effective remedy would be to return the goods and demand a refund.

It is well known that the present law in this situation favors the creditor-seller. The drafters of the UCCC were not ready to

[40] *See* Schuchman, *Consumer Credit by Adhesion Contract II*, 35 TEMP. L.Q. 281 (1962).

make any drastic changes in the law in this respect. What might seem obvious to a consumer does not appear at all obvious to a creditor or at least to a creditor's lawyer. Proponents of the Code are wont to argue that if a consumer finds himself in a position where he has been defrauded or has been delivered shoddy goods, the law provides a remedy. The remedy, however, is expensive and treacherous. The consumer must go into court, take the risk of proving all his allegations to a judge, and meanwhile sustain the burden of a cash outlay for the lawsuit. In the minds of most modern consumer protection advocates this is not very effective relief for the consumer.

Private remedies are not the only means of insuring the consumer effective relief. Article 6 of the UCCC provides for an administrator, who might have been an effective source of consumer relief. However, article 6 has done very little towards affording the administrator powers commensurate with his task of protecting consumer interests. The Code itself recognizes that the effectiveness of the office depends in large part upon the character of the administrator. However, the Act makes no attempt to respond to this problem. In fact, it suggests that the superintendent or commissioner of banking might be an appropriate administrator. Were a state to choose this alternative, the consumer protection advocate might well express skepticism. It is a recognized principle of administrative law that the industry-appointed or industry-controlled administrator tends to think, feel, and act as an industry spokesman.[41]

Assuming that a strong administrator is appointed, his powers should be adequate to permit him to be effective. All segments of the business community distrust administrative regulation even though it often represents the best method of day-to-day control. The UCCC unnecessarily hedges the enforcement powers of the administrator. Section 6.108, for example, gives the administrator power to issue cease and desist orders, but subsection 6 provides: "With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the administrator may not issue an order pursuant to this section but may bring a civil action for an injunction."

In effect, this subsection denies the administrator the power to enforce a proscription against unconscionable agreements or

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[41] *E.g.*, E. COX, R. FELLMETH & J. SCHULTZ, NADER'S RAIDERS REPORT ON THE FEDERAL TRADE COMMISSION ch. 3 (1969).

fraudulent conduct through the speedy, relatively inexpensive administrative process.[42]

The most effective tool for the relief of disappointed and injured consumers is the class action. Many consumer complaints occur again and again. The class action permits complaining consumers an economically viable method of private relief. Industry, of course, fears the class action, because of its effectiveness. Consumer advocates realize this and instinctively feel that a significant uniform act which ignores this remedy is really adopting a posture which says that "we are in favor of protecting the consumer as long as no one gets very serious about it." It is true that there are substantial policy questions involved with respect to class action suits. The present battle in Congress over consumer class action legislation is evidence of this disagreement.[43] It is not easy to determine in all cases whether a class action has been brought to vindicate consumer rights or has been brought by attorneys because of the economics of the fees involved in a successful class action. For years, industry lawyers have been arguing that if the consumer is really bilked, the courts will protect him. This argument ought to cut both ways. If the class action device is misused, courts should protect defendants in those cases. It seems that any complete consumer credit law should have a well-drafted provision permitting class actions. It is no answer to say that this is a question of procedural law and not for the UCCC. The question of effective relief must be solved by the UCCC if state procedural law is weak, as it most frequently is in this respect.[44]

In summary, the changes that the Code does make are inadequate and the changes that it fails to make are badly needed. It is evident that consumer protection advocates will not be satisfied until the consumer is afforded truly effective remedies.

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[42] Also, the injunctive powers given the administrator under § 6.111 are full of hedges. For example, subsection 2 reads as follows:

(2) In an action brought pursuant to this section the court may grant relief only if it finds

(a) that the respondent has made unconscionable agreements or is likely to engage in a course of fradulent or unconscionable conduct.

(b) that the agreements or conduct of the respondent had caused or is likely to cause injury to consumers; and

(c) that the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.

Reflection on this language indicates the extreme burden of proof placed upon an administrator to restrain activity of which consumers have legitimate compliants.

[43] *Compare* Eckhart, *The People's Remedy: Consumer Class Actions*, 6 TRIAL 14 (1969) *with* McLaren, *An Essential Filter*, 6 TRIAL 18 (1969).

[44] *See* Dole, *Private Enforcement for Consumer Credit Legislation*, 26 BUS. LAW. 915 (1971).

IV. LIMITATIONS ON CREDITOR REMEDIES

As previously indicated, the present legal system, with some statutory modifications, has been created by the creditor class for their benefit. Insofar as creditor remedies are concerned, this has resulted in a system where the creditor-written contract gives the creditor a number of ways in which he may enforce the consumer's promise to pay, and the creditor-created legal collection system supports the basic collection tactics of the creditor. The typical contract gives the creditor a panoply of "creditor rights": a security interest in the goods sold and in other collateral as well; the right to cumulate remedies *vis-a-vis* collateral with other collection devices; a legal interest in the consumer's future earnings; the right to collect attorneys' fees and other costs; special collection devices such as the power to confess judgment; and the power to assess penalties for non-payment. These rights derive from a supposed "freedom of contract."

The creditor also enjoys an efficient and ruthless collection machinery provided by the state in the form of judges, court clerks, and sheriffs. Most jurisdictions provide a relatively simple process of obtaining a default judgment and a legally supported collections system. Execution is accomplished through sheriff's sales of the debtor's property (often to the creditor), garnishment of wages (which are necessary to the day-to-day existence of the debtor), and even, in the recent past, imprisonment of the debtor.[45] One of the more ironic parts of this story is in the tale of small claims courts. Originally designed to assure the layman without a lawyer the opportunity to plead his case informally and inexpensively, the small claims procedure has been utilized almost exclusively by creditors. A day in small claims court consists of the creditor's secretary or collection agent presenting a sheaf of accounts for judgment. Under such circumstances even a sympathetic judge has no time to prevent egregious error.[46]

In addition to these institutional remedies, extra-legal collection agencies provide a ruthless means of enforcement. The collection agency may repeatedly telephone the debtor, his wife,

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[45] *See* J. HANNA & J. MACLACHLAN, CASES AND MATERIALS ON CREDITOR'S RIGHTS 70-73 (5th ed. 1957).

[46] Through personal observations of small claims in Connecticut it became evident that the sheer volume of bill collection processes precluded examination of the debtor, who was often absent. Notices to debtors did not reveal that he could informally discuss the matter with the judge. Such a discussion could result in a reasonable judgment such as a weekly order of payments rather than garnishment of wages.

and family in a program of verbal assault designed to elicit payment under duress. Contacting the debtor's employer in order to induce payment is another device. Written communications, threatening imaginary legal or other consequences in the event of continued nonpayment, often on stationery resembling that of official agencies or lawyers, are not unknown. A number of creditors perhaps can safely claim to never use such tactics, and yet they support them every time they hire an unscrupulous collection agency. Thus, it is grossly inaccurate to describe these practices as "abuses of the few."

A common assumption among collection agencies is that the nonpaying debtor is a social and economic pariah unworthy of any pity or salvation save that he pay his bills. The system permits no exception for failure to pay because of economic reverses not within the control of the debtor or because of simple overextension of credit due to assiduous merchandising tactics which are nearly as pressuring as the collection practices. The indirect economic and family costs in terms of peace of mind and emotional stability are not as yet empirically evaluated.

If consumer credit legislation were well thought out and were truly designed to give both consumers and creditors their respective places in the sun, the underlying assumptions of the above described system would be called into question. Yet, creditor spokesmen react with a number of factually unsupported statements when any attempt is made to limit the efficacy of the collection process.[47] It is primarily alleged that the system is necessary to assure that debtors pay their debts. It is further contended that for every incursion of the above enumerated creditors' bill of rights that there must necessarily be a concomitant increase in the cost of credit. Finally, it is suggested that consumer success in this area will result in denial of credit to the least credit worthy debtors, *i.e.*, the ghetto resident.

The assertion that the collection process is necessary in order to ensure that all debtors will pay is simply unfounded in fact. The assumption is that all debtors would default if there were not a ready and effective deterrent. While there is no sure answer to the question of why debtors honor their debts, the slight evidence at hand seems to negate a suggestion that they pay under threat of default judgment, garnishment, loss of job, or fear of phone calls in the middle of the night. There is evi-

[47] For the purposes of this article, the less sophisticated and obviously *ad hominem* arguments such as, "It is socially desirable that people pay their debts, there is no problem, or, our great American free enterprise system would collapse," will be ignored.

dence to suggest that debtors pay simply because they feel they ought to. In 1963, Nebraska debtors were given a windfall when the Nebraska Supreme Court invalidated the time-price differential doctrine.[48] The court ruled that all debtors who had purchased automobiles on credit could keep the automobile without further payments and sue for the return of any money paid inasmuch as the installment contract was usurious under Nebraska law.[49] All reliable evidence indicates that nearly all debtors continued to pay as though legally compelled.[50]

Other states have taken legislative steps which substantially alter existing creditor remedies. Texas, for example, has outlawed garnishment of wages,[51] and California has drastically reduced the number of situations where a creditor of a consumer debtor may exercise both his right to repossess a security interest and his right to a deficiency judgment.[52] It would appear that if the underlying assumption had some validity, the reduction in the deterrence would increase the incidence of deviant behavior, *i.e.*, nonpayment of debts. The absence of any such meaningful data suggests the falsity of the underlying assumption. Debtors pay for reasons other than the deterrent effect of efficient collection practices. Perhaps the answer lies in fear of the consequences of a bad credit rating.

It would be absurd to suggest that creditors be stripped of all collection remedies. There is no evidence that a respectable legal collection device which treated the debtor as a human being, with reasons for being unable to pay, would cause social consequences needing remedial action. Nothing more is necessary in order to permit creditors to perform their function.

The argument that a decrease in effectiveness of creditor collection devices would increase the cost of credit is, on the surface, fairly logical, and many unwittingly assume it is true. However, this argument ignores the distinction between effectiveness and economic efficiency. There is a startling lack of empirical evidence as to the efficacy of most collection processes.

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[48] For a discussion of the time-price differential doctrine *see generally* 14 A.L.R.3d 1065 (1967). Most states have usury laws limiting interest chargeable for a loan or forbearance of money. However, if a merchant offers to sell items at a cash price or a credit price, and the buyer accepts the latter, this is not usurious. The credit price is termed a price differential by the courts.

[49] Elder v. Doerr, 175 Neb. 483, 122 N.W.2d 528 (1963), *cert. denied*, 377 U.S. 973 (1963); *see also* Stanton v. Mattson, 175 Neb. 767, 123 N.W.2d 844 (1963).

[50] THE WALL STREET JOURNAL, Oct. 23, 1963, at 1, col. 1, indicated that 80 percent of one creditor's customers continued paying on illegal paper.

[51] TEXAS ANN. CIV. STAT. § 4099 (VERNON'S 1966).

[52] CAL. ANN. CIV. CODE § 1812.4, 1812.5 (WEST'S 1971).

In order to assert the argument of efficacy with some factual verity it would be necessary to demonstrate that the costs introduced into the particular system are more than recovered by what is produced by the system which would not be produced otherwise. To put the matter in a specific context, assume we are questioning the economic efficiency of the garnishment process. We would wish to know how much the creditor paid in order to reduce his claim to judgment, to serve the writ of garnishment, and to oversee the process of collecting from the employer. Assuming we have these figures for a statistically representative sample, we would then need to know how much was produced through these garnishments. We would then additionally need to know the results of a control group experiment which would constitute a group of statistically equivalent debtors who were not subject to the garnishment process. How much was collected from these debtors? Only if the net proceeds of the garnishment process exceeded the net proceeds from the group control would we be satisfied that the garnishment process was an element in the system which influenced the cost of credit.

Finally, the possibility that consumer protection legislation might jeopardize the extension of credit to the economically underprivileged is of admitted concern even to consumer advocates. Ghetto residents are the most in need of credit and would be most susceptible to loan shark activities if legal avenues of credit were unavailable. There is, therefore, surface justification to a charge that strong consumer legislation is middle class oriented.

It is here submitted that most of the above logic applies only with respect to rate regulation. It is an argument that reasonably generous rates must be established if we do not wish an effect which would compel industry to tighten its credit-granting policies.[53] Further, the argument loses force in relationship to the limitations on creditor remedies. The preceding discussion on the economics of the present collection practices would seem to apply even more forcefully to low income debtors. That is, the return from harsh collection practices is likely to be minimal from persons who have no real property, whose income is subject to the whims of the employment market, and whose medical expenses are greater than other parts of the population.

From many years of discussions in the public arena as to consumer protection legislation I concluded that much of the in-

[53] Credit extension policies operate partly on hunch and partly on economic assumptions.

dustry objection to reform is merely a fear of the unknown. Established business interests uniformly resist changes in the status quo. Consumer creditors are no exception. For example, when there was discussion of legislatively abrogating the holder in due course doctrine as to consumer paper, industry's major reaction was one of utter disbelief that the legislature would knowingly destroy the necessary underpinnings of the great American credit economy. More recently, industry leaders have been very nearly convinced, with a few exceptions, that the doctrine does not make that much difference to them anyway.[54] One wonders whether the same thing may not be true with respect to garnishment, deficiency judgments, harassing collection practices, and other aspects of the presently existing system.

The proposed UCCC makes no attempt to deal with the fundamental structural deficiencies of the credit system. It imposes only piecemeal and grudging limitations on the creditor's right to contract for whatever collection device he chooses. Probably the best example of this approach is provided by section 5.103 which limits creditor's use of the deficiency judgment following repossession to transactions where the cash price of the goods is $1,000 or less. Consumers argue that such restriction on the use of the deficiency judgment is much too narrow.

Professor Shuchman, in one of the very few, good, consumer-related empirical studies, has demonstrated the economics of the repossession, resale, and deficiency judgment process involving automobiles in one state.[55] The study clearly demonstrates the inefficiency of the system. Yet, section 5.103 of the UCCC provides that the creditor is forced to choose between repossession and a judgment for the outstanding balance only where the "cash price" of the goods was $1,000 or less. This section effectively removes the automobile from its coverage. Additionally, there is the very real likelihood that the effect will be to increase the "cash price" of all goods now selling just below $1,000 to a cash price of $1,001.00.

This discussion has so far confined itself to the economics and other realities of the creditor's position only. The overriding concern of the public in a collection system which minimizes the social costs — economic and otherwise — has received almost no consideration. Judge Skelly Wright has elsewhere outlined the social costs in terms of broken homes and bankrupt debtors

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[54] *See* Kripke, *Consumer Credit Regulation: A Creditor-Oriented Viewpoint*, 68 COLUM. L. REV. 445 (1968).

[55] Shuchman, *Profit on Default: An Archival Study of Automobile Repossession and Resale*, 22 STAN. L. REV. 20 (1969).

which result from garnishment of wages, loss of job, and eventual reliance on welfare.[56] Even if the doubtful economic efficiency of the present system is not enough, these social costs demand a fundamental reexamination of creditor remedies.

V. RATES

The consumer advocate is most on the defensive with respect to the all-important question of the regulation of rates. Those who represent that part of the industry which seeks more reasonable rate structures assert that the proposed rate provisions introduce order where chaos reigns. But the matter is much more complex than the picture painted by most proponents of the UCCC. In order to properly understand the proposed rate structure of the UCCC, it is necessary to isolate various parts of the present system.

The three general areas in which rates are of interest to the consumer are small loans, retail installment sales, and open end credit plans. Most jurisdictions do regulate rates on small loans.[57] Legislation in this field dates back to the early 20th century.[58]

At that time "loan sharking" was a recognized social evil. The suggested solution, following a study of the matter by the Russell Sage Foundation,[59] was the Uniform Small Loan Law which was enacted in many jurisdictions.[60] Insofar as rates are concerned, its basic feature was the exemption of licensed lenders from the state usury laws. It provided a graduated scale of permissible rates for licensed lenders.[61] This feature of rate regulation has been termed the "public utility" method. Competition does not settle rates; the statutory scale does. There is a serious question as to the efficacy of the public utility method as presently applied. Typical rate structures on small loans permit rates up to 36 percent, hardly a restrictive limit. Moreover, the licensing of a limited number of small loan creditors creates an oligarchy of lenders who uniformly charge the statutory maximum. Thus competitive forces play no part in the small loan industry.[62]

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[56] *See generally,* Wright, *The Courts Have Failed the Poor,* N.Y. Times, Mar. 9, 1969, (Magazine), at 26.

[57] CURRAN, *supra* note 31, at 16-45.

[58] *Id.* at 2.

[59] *Id.*

[60] *Id.* at 16.

[61] The UNIFORM SMALL LOAN LAW, § 13(a) (seventh draft), sets a rate of 3 percent per month on loans up to $100 and 2 percent per month on the excess. For state variations see CURRAN, *supra* note 31, at 20.

[62] Warren, *supra* note 29, at 857.

Retail installment sales differ functionally from small loans. Sellers are not licensed or supervised as to sales credit and are generally exempt from usury statutes. It was apparently felt that consumer credit could not expand using the relatively small return permitted by the usury limits of most jurisdictions. This escape from usury legislation was accomplished by judicial recognition of the fiction of a "time price differential."[63] If a merchant sold goods at a credit price which was higher than a cash price, the difference was deemed not to be interest but a price differential.[64] State efforts to limit these "finance charges" have varied from blanket regulation to no regulation at all.[65] Thus, the effect of the proposed rate schedule in the UCCC will vary throughout the states.

An increasingly important source of consumer credit is the open end credit plan. These would include the retail revolving charge account and the charge card plan whether sponsored by a bank, an oil company, or nationwide financing institution such as Diners' Club. Few states have set explicit limits on the interest which may be charged.[66] What little legislation there is set a rate of 1½ percent a month.

It is difficult to justify any exception from normal usury statutes for open end credit plans, and yet industry has uniformly charged rates in excess of statutory limits. Litigation in at least two states has been successful in subjugating open end credit to interest laws.[67]

It is against these areas of legislative activity that any consumer credit legislation proposed as "model" or "uniform" must be viewed. The provisions in the proposed UCCC relating to rates based upon the following assumptions appearing in the Prefatory Note:

> *First,* the successful American way of permitting competition to determine prices of non-monopolies commodities and services should also be allowed to apply to the pricing of money and credit.
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> *Second,* usury laws imposing inflexible price ceilings on money and credit are historical vestiges of the erroneous supposition that emperors, kings and governments could effectively

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[63] 14 A.L.R.3d 1065 (1967).

[64] This fiction becomes increasingly difficult to maintain as retailers establish regular relations with finance agencies which determine credit granting policies and agree to purchase all of the retailer's consumer credit obligations.

[65] CURRAN, *supra* note 31, at 101.

[66] *See* 1 CCH CONSUMER CREDIT GUIDE 1401-31 (1969).

[67] Wisconsin v. J. C. Penney, 48 Wis.2d 125, 179 N.W.2d 641 (1970); Donnelly v. Sears, Roebuck & Co., Conn. Ct. Common Pleas, Hartford County, No. 101213 Col. (December 2, 1970).

> fix all prices; the need to escape the rigidity of usury laws has led to special laws, which only the expert can find or understand, for most types of credit transactions requiring a charge higher than the usury rate.[68]

The Code effectuates these assumptions by establishing free entry into the credit market subject to "financial responsibility, character and fitness."[69] This is a change from the present requirement of "convenience and advantage" that has been used by administrators of small loan acts to limit the outlets of lenders.[70] Ceilings on the price of credit are set low enough to prevent over-reaching by creditors, yet high enough to permit competition to have an effect. The limits proposed by the Code apply both to licensed lenders and credit sellers and would permit rates of 36 percent on $300 or less, 21 percent on amounts from $300 to $1,000, and 15 percent on any excess. Alternatively, 18 percent may be charged on the entire amount.[71] The maximum rate for revolving charge accounts is pegged at 2 percent per month on amounts up to $500 and 1½ percent on the remainder.[72]

The practical politics of gaining support for such legislation are immensely complicated by the widespread lack of knowledge about (a) the present rate structure, (b) the economics of consumer credit, (c) the relationship between legally set rates and actual charges, and (d) the effect of a free entry policy on the credit market. This general ignorance fosters ambivalence on the part of both the champions and opponents of the UCCC. Consumer advocates are reluctant to accept on faith the Code's argument that free entry will permit competition to lower rates. There is little or no evidence to substantiate this claim. On the contrary, past experience indicates that interest rates quickly rise to the legal maximum. Yet, some change is clearly needed. What should consumer groups do? Since their present indecision is based on lack of knowledge, all they really can do is request some hard data on the economics of credit.

Industry must be required to demonstrate more convincingly that the free entry principle will work. It does not seem to be enough to say that the idea is "worth a try."

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[68] UNIFORM CONSUMER CREDIT CODE XIX (1969).

[69] UNIFORM CONSUMER CREDIT CODE § 3.503(2).

[70] Warren, *supra* note 29, at 875.

[71] UNIFORM CONSUMER CREDIT CODE §§ 2.201, 3.508 (see § 3.201 setting 18 percent per year on the unpaid balance as the maximum rate for other than supervised loans).

[72] UNIFORM CONSUMER CREDIT CODE § 2.207.

CONCLUSION

Hopefully for consumer advocates, the battle over the UCCC will be replaced by a more realistic struggle for balanced consumer credit legislation. The legislative activity in 1969 clearly indicated that consumer credit legislation cannot be uniform. Generally, interim legislative study commissioners were entrusted with the duty of reconciling the UCCC with consumer position papers. In this sense the act is being treated more as a starting point than as the usual uniform act. The dialogue continues with a new trust. It is to be hoped that the Uniform Commissioners have given up their vain search for uniformity in this area. Given the fate of the UCCC in state legislatures thus far, the only explanation of continued adherence to the principle of uniformity is a stubborn refusal to recognize the inevitable.