

Louisiana Law Review

Volume 34 | Number 3

Employment Discrimination: A Title VII Symposium

Symposium: Louisiana's New Consumer Protection

Legislation

Spring 1974

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Repository Citation

W. Richard House Jr., *Remedies and Administration of the Consumer Credit Law*, 34 La. L. Rev. (1974)

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REMEDIES AND ADMINISTRATION OF THE CONSUMER CREDIT LAW

The strength of any regulatory legislation is best tested in the character of its enforcement provisions and consumer credit legislation is no exception.¹ Many remedies provided by the Louisiana Consumer Credit Law² are found under various sections of the Act other than those dealing with remedies and penalties³ or administration.⁴ These remedies include limitations on negotiable instruments,⁵ holders in due course,⁶ the consumer's right to cancel home solicitation sales⁷ and a prohibition of unauthorized collection practices.⁸

The remedies and penalties section of the Consumer Credit Law seeks to provide protection for an aggrieved consumer through a provision on unconscionability⁹ and others providing for civil¹⁰ and criminal¹¹ sanctions. Moreover, the administrative section of the Act establishes an office of commissioner¹² with various enumerated powers including the power to sue for injunctive relief.¹³ The private civil remedies section distinguishes between those violations of interest

1. Fritz, *Would the Uniform Consumer Credit Code Help the Consumer?*, 25 BUS. LAW. 511 (1970); Spanogle, *Why Does the Proposed Uniform Consumer Credit Code Eschew Private Enforcement?*, 23 BUS. LAW. 1039 (1968).

2. LA. R.S. 9:3510-68 (Supp. 1972).

3. *Id.* 9:3551-53 (Supp. 1972).

4. *Id.* 9:3554-56 (Supp. 1972).

5. *Id.* 9:3532 (Supp. 1972).

6. *Id.* 9:3533 (Supp. 1972).

7. *Id.* 9:3538 (Supp. 1972). The right to cancel a home solicitation is accompanied by a provision requiring the vendor to notify the vendee of this right to cancel in the sale. *Id.* 9:3539 (Supp. 1972). Upon exercising this right the vendee's down payment is restored except for a limited cancellation fee. *Id.* 9:3540 (Supp. 1972).

8. *Id.* 9:3562 (Supp. 1972). This provision specifically preserves the right of the debtor to bring tort actions under Civil Code article 2315.

9. *See* LA. R.S. 9:3551 (Supp. 1972).

10. LA. R.S. 9:3552 (Supp. 1972). It has been maintained that the aggrieved consumer should be able to effectively seek redress: (1) As a matter of right through his own counsel without having to seek the approval of a state agency, (2) Because private enforcement capabilities would add thousands of additional persons as "private Attorneys General" to police the practices of the credit industry. Spanogle, *Why Does the Proposed Uniform Consumer Credit Code Eschew Private Enforcement?*, 23 BUS. LAW. 1039, 1040-41 (1968).

11. LA. R.S. 9:3553 (Supp. 1972).

12. *Id.* 9:3554 (Supp. 1972). Ideally, the commissioner is the state official whose responsibility is to enforce the provisions of the Act. It has been maintained that the consolidation of enforcement procedures into a single state office improves communication, uniformity and coordination of enforcement efforts. *See* Comment, 55 MINN. L. REV. 572 (1971).

13. LA. R.S. 9:3555 (Supp. 1972).

ceilings that are self-discovered¹⁴ and those discovered through a written consumer complaint.¹⁵ If self-discovered, the creditor is given an opportunity to correct the violation within fifteen days of the discovery, or occurrence, without incurring civil liability.¹⁶ On the other hand, violations discovered as a result of written consumer complaints are categorized as either intentional or unintentional.¹⁷ An intentional violation occurs only if the consumer notifies the creditor of the violation and the creditor fails to correct the violation within 30 days.¹⁸ The penalty for an intentional violation is a refund of all loan finance or credit service charges plus recovery of three times the amount of such charges in addition to reasonable attorney's fees.¹⁹

If a creditor corrects the violation within the 30 day period, he will incur no civil liability.²⁰ In such cases, the violation is considered unintentional and the only remedy provided for such violation is its correction.²¹ Thus, no matter how intentional a creditor's violation may have been, he can escape liability simply by correcting the violation within 30 days of notice by the consumer.

These inadequate remedies are even further negated by the pre-

14. *Id.* 9:3552 B (Supp. 1972).

15. *Id.* 9:3552 A (Supp. 1972).

16. *Id.* 9:3552 B (Supp. 1972). These self-discovered violations by the creditor exempt him from civil liability even if the violation was intentional. In the event of self-discovered multiple violations, the creditor must notify the commissioner of their existence within fifteen days of discovery, and must correct the violations as to each consumer affected within 30 days, subject to two 30 day extensions to be granted at the discretion of the commissioner.

17. *Id.* 9:3552 A (Supp. 1972).

18. R.S. 9:3552 provides in A(1)(a) that "the *right to recover* the civil penalty under this subsection accrues *only* after

"(i) written notice is given to the extender of credit by certified mail addressed to the extender of credit's place of business in which the consumer credit transaction arose;

"(ii) a copy of such notice is mailed to the extender of credit's agent for service of process; and

"(iii) Thirty (30) days have elapsed since receipt of such notice by the extender of credit, and the violation has not been corrected."

19. *Id.* 9:3552 A (Supp. 1972): The Uniform Consumer Credit Code provides for a recovery of up to ten times the amount of the excess charge for deliberate violations. (§ 5.202(4)). Thus, if the interest on an unpaid principal amount of \$800 is 50 percent (\$400) instead of the maximum 36 percent as provided for in R.S. 9:3519, (\$800 at 36 percent is \$288) under the Uniform Consumer Credit Code the maximum permissible recovery (at the discretion of the court) would be the excess charge (\$400 minus \$288 equals \$112) multiplied by ten which would be \$1120 plus reasonable attorney's fees (also allowable at the court's discretion). The Louisiana Consumer Credit Law provides for *mandatory* recovery of the entire service charge (\$400) multiplied by three which would be \$1200 plus *mandatory* reimbursement of reasonable attorney's fees.

20. LA. R.S. 9:3552 A (Supp. 1972). See note 18 *supra*.

21. *Id.*

scriptive period imposed for civil actions under the section. An action must be brought within 60 days of final payment of the contract or within one year of the violation in a revolving loan or charge account.²² A similar provision under the Uniform Consumer Credit Code²³ has been criticized as being "ridiculously short"²⁴ because "many debtors do not realize that their rights have been abused until long afterwards, [making] a long limitations period advisable."²⁵

In view of the remedial inadequacies found in the Act, it might be advisable for a consumer, faced with loan finance charges exacted in violation of the permissible maximum charges,²⁶ to rely upon the Louisiana usury statute,²⁷ not contained within the Act. This statute, R.S. 9:3501, provides: "Any contract for the payment of interest in excess of that authorized by law shall result in the forfeiture of the entire interest so contracted." In *Thrift Funds of Baton Rouge v. Jones*,²⁸ the Louisiana supreme court held

that the simple and unambiguous meaning of the statute is to cause the forfeiture of all interest due on the contract, not just the usurious portion of it and not just during the period that the usurious charges were exacted.²⁹

Thus, R.S. 9:3501 provides for recovery of *all* interest when violations occur, not just the overcharge upon correction following notification provided under the Consumer Credit Law.

Thrift Funds concerned an agreement made prior to the Consumer Credit Law. However, there is no reason to believe that R.S. 9:3501 has been repealed by the Act³⁰ as any such intention is not evidenced in the Act's express repeal provisions.³¹ Furthermore, there is no substantial conflict between R.S. 9:3501 and the remedies and penalties section dealing with written consumer complaints. Left open is the question of whether a consumer could invoke the protection of R.S. 9:3501 upon receiving notification of a self-discovered usurious violation by the creditor.

22. *Id.* 9:3552 E (Supp. 1972).

23. UNIFORM CONSUMER CREDIT CODE § 5.202(A).

24. Fritz, *Would the Uniform Consumer Credit Code Help the Consumer?*, 25 BUS. LAW. 511, 517-18 (1970).

25. *Id.* at 517.

26. LA. R.S. 9:3519 (Supp. 1972).

27. *Id.* 9:3501 (1950).

28. 274 So. 2d 150 (La. 1973).

29. *Id.* at 155.

30. La. Acts 1972, No. 454 § 1-15.

31. See *The Work of the Louisiana Appellate Courts for the 1972-1973 Term—Obligations*, 34 LA. L. REV. 231 (1974).

The criminal penalties provided under the consumer law³² require proof that a creditor has "willfully" made excess charges. However, the scope of the term "willfully" and the burden of proof required are not stated. Furthermore, practical political considerations make it doubtful that courts will ever define the term. It has been suggested that "District Attorneys do not like to prosecute taxpaying, politically aware businessmen over matters involving such technical wrongs."³³

The Act provides for the office of an administrator.³⁴ The commissioner has the duty to counsel and to educate the consumer as well as a duty to act upon consumer complaints. In order to perform these duties, the commissioner has power to subpoena persons, to interpret the act through guidelines, to revoke licenses of creditors and to bring suits for an aggrieved consumer.³⁵ An additional provision³⁶ gives the commissioner authority to seek injunctive relief against creditors and their agents to restrain present or future violations of the Act or other fraudulent conduct.

The commissioner is expressly denied the authority to bring a class action in behalf of consumers.³⁷ The need for such power is self-evident. It would reduce multiplicity of suits,³⁸ make them economically efficient,³⁹ and also provide a sufficient deterrent effect upon creditors.⁴⁰ According to the California supreme court

[a] class action by consumers produces . . . a therapeutic effect upon those . . . who indulge in fraudulent practices, aid to legitimate business enterprises by curtailing illegitimate competition, and avoidance to the judicial process of the burden of multiple litigation involving identical claims⁴¹

32. LA. R.S. 9:3553 (Supp. 1972).

33. Comment, 55 MINN. L. REV. 572 (1970).

34. LA. R.S. 9:3554 (Supp. 1972).

35. *Id.* The power to revoke licenses accrues only from the findings of an administrative hearing. Likewise, the commissioner may bring suit for an aggrieved consumer only after an administrative hearing has been held and a finding is made that warrants the commissioner's taking action. Thus, the consumer must bear the burden of the time and expense of administrative procedure merely to get the commissioner to take his cause to court.

36. LA. R.S. 9:3555 (Supp. 1972).

37. *Id.* 9:3554 F (Supp. 1972).

38. Fritz, *Would the Uniform Consumer Credit Code Help the Consumer?*, 25 BUS. LAW. 511, 518 (1970).

39. Comment, 55 MINN. L. REV. 572, 596 (1971).

40. *Id.*

41. *Vasquez v. Superior Ct.*, 4 Cal. 3d 800, 808, 484 P.2d 964, 968-69, 94 Cal. Rptr. 796, 800-01 (1971).

Despite the prohibition of class actions, the other duties and powers of the commissioner appear to be significant. Whether these powers can ever be aggressively and effectively used on behalf of the consumer remains to be seen. It is generally agreed that the remedial emphasis on the Uniform Consumer Credit Code is upon enforcement through a public agency,⁴² as is present in the Louisiana act. This approach emphasizes the prevention of violations *before* they occur rather than in remedying them *after* they occur.⁴³ The consolidation of efforts within a single office to deal with consumer problems is also advanced in favor of the agency approach.⁴⁴ However, it has been maintained that this emphasis upon administrative powers for remedial action make regulatory provisions a "loosely enforced mockery"⁴⁵ because "the finance lobby can play buddies with the administrator . . . or can cut his appropriations"⁴⁶ by exertion of influence upon the governor, legislators or other state officials.⁴⁷

On the other hand, it is doubtful that the private remedies and penalties of the Louisiana Consumer Credit Law will serve as a deterrent to the abuses by creditors. The civil remedies are substantially less than those already in existence. Thus, the consumer receives little with regards to an affirmative vindication of his rights. Litigation is an extremely uncertain process which carries no guarantee of success, requiring the consumer to invest time, money and his reputation and good will with the credit industry.⁴⁸ This is especially hard felt by the low-income and under-educated who suffer an additional burden of high interest rates in the credit market place.⁴⁹ As a result of a failure to offer adequate prospects of success or to substantially compensate him for his risks upon successful litigation, the consumer is unlikely to litigate on his own. Thus, the nature of the protection to the consumer found in the Act is greatly diminished by the lack of private preventive and remedial opportunities.

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42. Fritz, *Would the Uniform Consumer Credit Code Help the Consumer?*, 25 BUS. LAW 511 (1970); Spanogle, *Why Does the Proposed Uniform Consumer Credit Code Eschew Private Enforcement?*, 23 BUS. LAW. 1039 (1968); Comment, 55 MINN. L. REV. 572 (1971).

43. Comment, 55 MINN. L. REV. 572, 585 (1971).

44. *Id.* at 586.

45. Fritz, *Would the Uniform Consumer Credit Code Help the Consumer?*, 25 BUS. LAW. 511 (1970).

46. *Id.* at 513.

47. *Id.* at 518.

48. Spanogle, *Why Does the Proposed Uniform Consumer Credit Code Eschew Private Enforcement?*, 23 BUS. LAW. 1039, 1042-43 (1968).

49. Jones, *The Inner City Marketplace: The Need for Law and Order*, 37 GEO. WASH. L. REV. 1013 (1969).