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THE REVOLUTION IN CONSUMER CREDIT LEGISLATION

BY BARKLEY CLARK*

The growth of consumer credit in this country, the greatly increased personal bankruptcy rate, and the unscrupulous credit practices of marginal sellers and lenders who prey on the poor have led to a heightened interest in consumer credit reform. In this article Mr. Clark examines the present state of Colorado law relating to consumer credit and then discusses the recently passed Federal Consumer Credit Protection Act and the more recently proposed Uniform Consumer Credit Code. He notes the needed changes that the federal statute will bring in Colorado law, and, after presenting a detailed analysis of the provisions of the proposed Uniform Consumer Credit Code, Mr. Clark concludes by observing that the Colorado legislature should adopt the Code.

INTRODUCTION

THE magnitude of consumer credit in this country is overwhelming. It presently represents more than $100 billion a year[1] and is steadily rising with a self-assurance matched by few other segments of the economy. If residential mortgages are included, aggregate private consumer debt outdistances the public national debt. Some of the following totals as published in the *Federal Reserve Bulletin* for October of 1968 are indicative: motor vehicle paper, over $33 billion; other consumer goods paper, nearly $22 billion; personal loans, over $23 billion.[2] Americans spend on the average about 15 percent of their disposable income to carry nonmortgage consumer debt; if mortgage debt is added, this figure rises to over 60 percent. Revolving charge accounts and check credit plans are being opened with bewildering frequency. Four out of every five cars are purchased on time. Sixty percent of department store sales are made on revolving credit. The credit card is rapidly replacing the Coca-Cola bottle as the master symbol of our culture.

Climbing in direct proportion to the availability of consumer credit is the incidence of personal bankruptcy. Although bankruptcy

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[1] FED. RES. BULL., Oct. 1968, at A-52.

[2] *Id.*

was long thought of as applying primarily in a business context, personal bankruptcies have risen from 18,000 in 1950 to well over 200,000 in 1968. The nonbusiness share of total bankruptcies is now over 90 percent. The consumer credit boom appears to be fast removing the moral stigma of bankruptcy.

The phenomenal growth of consumer credit and bankruptcy, coupled with the recognition that unscrupulous practices by marginal sellers and lenders primarily injure the poor, has led to a great quickening of interest in consumer credit reform. In the past, state legislation in this area has taken three basic forms: (1) usury laws; (2) disclosure; and (3) provisions limiting creditors' rights. New legislation on both the federal and state levels is revolutionizing treatment of the consumer in all three of these categories. The two major pieces of new legislation are the Federal Consumer Credit Protection Act[3] and the proposed Uniform Consumer Credit Code.[4] Before exploring these new statutory departures, however, a brief review of consumer credit legislation presently in effect in Colorado is in order.

I. THE CONSUMER UNDER PRESENT COLORADO LAW

A. *The Small Loan Statutes.*

Colorado has no general usury statute. Although the judgment rate of interest is fixed at 6 percent per annum,[5] debtor and creditor are free to contract in writing for a higher amount in the absence of one of the special statutes described below.[6] When there is no agreement between the parties to a loan, the rate of interest is fixed at 6 percent per annum.[7]

The oldest small loan statute is the 1913 Loan Law[8] which regulates persons engaged in the business of making secured loans in excess of $1,500 where interest of more than 12 percent per annum is charged.[9] Lenders in this category must obtain a license from the state banking commissioner.[10] Disclosure is required of the terms of the loan, including the interest rate, although there is no require-

[3] Consumer Credit Protection Act, 82 Stat. 146 (1968) [hereinafter referred to and cited as C.C.P.A.].

[4] UNIFORM CONSUMER CREDIT CODE [hereinafter referred to and cited as U.C.C.C.]. References are to the Final Draft version as promulgated by the National Conference of Commissioners on Uniform State Laws.

[5] COLO. REV. STAT. ANN. § 73-1-2 (1963).

[6] *Id.* § 73-1-3.

[7] *Id.* § 73-1-1.

[8] *Id.* § 73-2-1 *et seq.*

[9] At first glance it would seem that an individual making a one-shot loan would not be a person "engaged in the business of making loans." *But see* COLO. REV. STAT. ANN. §§ 73-2-8(3), 73-3-2(6) (1963).

[10] COLO. REV. STAT. ANN. §§ 73-2-1, 73-2-2 (1963).

ment that the interest be expressed in terms of an annual percentage rate.[11] The maximum rate of interest is set at 2 percent per month.[12]

The Colorado Consumer Finance Act,[13] passed in 1955, similarly provides for licensing of lenders who make loans *below* $1,500 at an interest rate of 12 percent per annum or more. The lender is authorized to disclose his interest rate as a percentage per month,[14] and a rate ceiling is set at 3 percent per month for loans of $300. For that part of the loan between $300 and $500 the maximum is 1½ percent per month, and for that part of the loan between $500 and $1,500 the maximum is 1 percent per month.[15] Oddly enough, the rate ceiling imposed on loans under $1,500 is lower than that imposed on loans above $1,500. Wage assignments are prohibited in connection with loans made under the Consumer Finance Act.[16] It seems somewhat anomalous that there is no prohibition against wage assignments under the 1913 Loan Law. Similarly, it is not clear why the 1913 Loan Law applies only to secured loans, while the Consumer Finance Act regulates loans both secured and unsecured. Such inconsistencies are probably a product of the fact that the two statutes were drafted at different times by different legislators. It should be noted that banks and credit unions are exempt from the Consumer Finance Act[17] and banks are exempt from the 1913 Loan Law.[18]

B. *The Time-Price Doctrine.*

The time-price doctrine, under which a credit sale of goods or services is made at a price higher than the cash price and where the time-price differential is deemed not to constitute interest within the meaning of small loan legislation, has long been the rule in Colorado.[19] In line with the overwhelming majority of jurisdictions in the United States, the Colorado Supreme Court has stood firm against the attacks on the time-price doctrine which have succeeded in several states. For example, in the leading case of *Elder v. Doerr*[20] the Nebraska Supreme Court found that a time-price sale which complied with the requirements of the Nebraska Installment Sales Act was in fact a usurious loan. Although there seems to be no logical reason

[11] *Id.* § 73-2-5.

[12] *Id.*

[13] *Id.* § 73-3-1 *et seq.*

[14] *Id.* § 73-3-14(1)(b).

[15] *Id.* § 73-3-14(1)(a).

[16] *Id.* § 73-3-17.

[17] *Id.* § 73-3-3(2).

[18] *Id.* § 73-2-10.

[19] Theodore Roosevelt Agency, Inc. v. GMAC, 156 Colo. 237, 398 P.2d 965 (1965); Cady L. Daniels, Inc. v. Fenton, 97 Colo. 409, 50 P.2d 62 (1935); Gilbert v. Hudgens, 92 Colo. 571, 22 P.2d 858 (1933).

[20] 175 Neb. 483, 122 N.W.2d 528 (1963).

for drawing a nice distinction between interest on a loan and time-price differential on an installment sale, the time-price doctrine may be necessary to the very existence of installment selling in a state with a restrictive general usury ceiling. Because of this economic necessity, the time-price doctrine has become the law of nearly every state.[21] In Colorado, however, which has no restrictive usury ceilings, the time-price doctrine seems academic, at least with respect to installment sales of tangible personal property.

C. *The Installment Sales Statutes.*

Colorado has two retail installment sales laws which, in spite of the time-price doctrine, impose ceilings on time-price differentials comparable to the interest ceilings under the small loan laws. The Retail Installment Sales Act[22] and the Personal Property Installment Sales Act[23] contain both rate ceilings and disclosure provisions. Under the Retail Installment Sales Act, which requires licensing of sales finance companies who purchase installment paper from car dealers,[24] the time-price differential ceilings run from 16 percent to 34 percent on a simple annual basis, depending upon the type of car involved.[25] The Retail Installment Sales Act only covers installment sales where a purchase money security interest in the car is retained by the seller or the finance company. The Retail Installment Sales Act authorizes interest rebate on prepayment according to the "Rule of 78."[26] It also limits delinquency charges to 5 percent of the amount of an installment in default.[27]

The core of the Retail Installment Sales Act is the disclosure requirement imposed on every retail installment sales contract. Disclosure in writing on the face of the contract must be made of the following items in order: the cash price of the motor vehicle; the amount of any cash downpayment or trade-in; the unpaid balance of the cash price; the cost of any insurance charged to the purchaser including a bold-face statement that the contract does not provide for liability insurance if such is the case; the amount of the time-price

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[21] In addition to Nebraska, the time-price doctrine has been criticized in the State of Arkansas. *See* Hare v. General Contract Purchase Corp., 220 Ark. 601, 249 S.W.2d 973 (1952).

[22] COLO. REV. STAT. ANN. § 13-16-1 *et seq.* (1963).

[23] *Id.* § 121-2-1 *et seq.*

[24] *Id.* § 13-16-2.

[25] *Id.* § 13-16-6(6)(a).

[26] *Id.* § 13-16-7(1). The "Rule of 78" is an accounting principle comparable to the sum-of-the-years-digits method for depreciating property. Under the "Rule of 78" the interest rebate which must be given to the borrower on prepayment is less than would be obtained by calculating the outstanding balance by a straight-line method. The "Rule" reflects the fact that the borrower has the use of more than half of the credit for the first half of its life and should pay for the use of this larger amount if the transaction is terminated by prepayment.

[27] *Id.* § 13-16-6(1)(c).

differential stated as a lump sum; the time balance owed by the retail buyer and his payment schedule; and the time selling price, which is the sum of the down payment and the time balance.[28] Although this is a comprehensive disclosure scheme as far as it goes, the *rate* of the time-price differential is conspicuously missing. Therefore, under the Retail Installment Sales Act the buyer will not necessarily know what rate of interest he is paying for the privilege of purchasing the car on time, nor how this rate would compare to taking out a loan at a bank and using the proceeds to buy the car. As will be pointed out subsequently, such rate disclosure is the heart and soul of the C.C.P.A. and the U.C.C.C.

The Personal Property Installment Sales Act[29] regulates retail installment sales of personal property other than motor vehicles. It contains ceilings on time-price differentials ranging from 30 percent on that part of the credit under $300 down to 20 percent on that part of the credit in excess of $1,000.[30] Like the Retail Installment Sales Act, the Personal Property Act contains the 5 percent per installment limitation on delinquency charges[31] and an authorization for interest rebate according to the "Rule of 78."[32] The disclosure scheme in the Personal Property Act is similar to that found in the Retail Installment Sales Act, with no required disclosure of the rate of the time-price differential. The disclosure in both statutes is primarily aimed at defining for the purchaser the spread between the cash price and the time price.[33]

Both the Retail Installment Sales Act and the Personal Property Act contain hidden rough spots and inconsistencies. For example, the coverage of both statutes extends to all "retail" transactions where the goods are purchased for reasons other than resale.[34] Thus both statutes by their literal terms apply to retail business transactions such as the installment purchase of heavy equipment by a corporation. It seems obvious that the purpose of installment sales legislation is to protect the individual consumer rather than the businessman who is in a position to protect himself. It is for this reason that the Colorado statutes would more properly distinguish between "consumer" and "nonconsumer" transactions rather than "retail" and "wholesale" transactions. Nevertheless, this strange anomaly is firmly imbedded in the statutes.

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[28] *Id.* § 13-16-6(2)(a).

[29] *Id.* § 121-2-1 *et seq.*

[30] *Id.* § 121-2-4(1).

[31] *Id.* § 121-2-7(1).

[32] *Id.* § 121-2-8.

[33] For a discussion of all the present Colorado statutes see A. HELLERSTEIN & L. HELLERSTEIN, CHATTEL MORTGAGES IN COLORADO (6th ed. 1963).

[34] COLO. REV. STAT. ANN. §§ 13-16-1(3), 121-2-2(2) (1963).

It is also not clear why the Colorado installment sales statutes apply only to secured transactions and not to unsecured installment selling, where the consumer would seem to need just as much aid. Nor are the two statutes free from inconsistencies between them. Although they both contain limits on delinquency charges, only the Retail Installment Sales Act prohibits cognovit notes.[35] It seems fair to ask, Why the distinction? Finally, neither of the installment sales statutes requires any disclosure of the rate of the time-price differential even though the small loan laws require some disclosure of the rate. This seems to be an unwitting and unnecessary extension of the time-price doctrine into the area of disclosure. In short, although present Colorado installment sales legislation serves a useful function, its inconsistencies illustrate the need for a more uniform treatment of problems in this area.

D. *The Uniform Commercial Code.*

There are also special consumer provisions in the Uniform Commercial Code.[36] Article 9, dealing with secured transactions, includes a special category of "consumer goods," defined as those goods "used or bought for use primarily for personal, family, or household purposes."[37] Recognizing that most consumer credit transactions have a local flavor, the Code requires that financing statements covering consumer goods are to be filed with the clerk and recorder in the county of the debtor's residence rather than with the Colorado Secretary of State.[38] The Code expressly provides that a transaction subject to Article 9 is also subject to other Colorado statutes regulating small loans and retail installment sales, and that in case of conflict such consumer legislation controls.[39]

Furthermore, the consumer under the Code is protected by certain specific Code provisions. A security agreement under Article 9 must specifically identify and itemize consumer goods,[40] although only a general description of nonconsumer goods is required; such a provision presumably deters the creditor from grabbing the kitchen sink. No afteracquired property clauses are permitted to encumber consumer goods.[41] No security interest in consumer goods used by a family, other than a purchase money interest in a motor vehicle, is valid unless the security agreement is signed by both husband and

[35] *Id.* § 13-16-6(1)(b).
[36] *Id.* § 155 *et seq.* (1963) [hereinafter referred to as the Code].
[37] *Id.* § 155-9-109(1).
[38] *Id.* § 155-9-401(a).
[39] *Id.* § 155-9-203(2).
[40] *Id.* § 155-9-110.
[41] *Id.* § 155-9-204(4)(b).

wife.[42] If a debtor has paid 60 percent of the cash price of consumer goods through a loan or time sale, a secured party who repossesses the collateral must dispose of the collateral within 90 days, by sale, lease, or otherwise.[43] By contrast, in cases involving nonconsumer collateral, a secured party who has repossessed may propose to retain the collateral in satisfaction of the obligation, and such disposition may be averted only if the debtor objects.[44] A consumer who buys consumer goods having an original purchase price of $250 or less takes free of a purchase money security interest in the goods where the seller has relied upon automatic perfection rather than filing a financing statement.[45]

Perhaps the most significant consumer provision in the Code is hidden in section 2-302, under which a court may render "unconscionable" contracts unenforceable. This broad provision has already been invoked by the courts to strike down many installment sales provisions which bear the stamp of the shark, including sweeping cross-collateral clauses, waivers of defenses, and referral sales programs.[46]

E. *Other Statutory Protections.*

In addition to the consumer legislation discussed above, Colorado also has statutes regulating industrial banks, the issuance of credit insurance, and assignments of wages.

The Industrial Bank Act[47] requires the licensing of industrial banks. Such banks may charge an annual add-on interest rate on loans not to exceed 10 percent.[48] Colorado is one of the few states which has no usury statute governing commercial banks. Because the Industrial Bank Act is not aimed at consumer lending as such, however, it contains no disclosure provisions.

The Colorado Insurance as Security for Loans statute[49] regulates consumer lending insofar as it authorizes the lender, if it is a duly

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[42] *Id.* § 155-9-203(1)(b).

[43] *Id.* § 155-9-505(1).

[44] *Id.* § 155-9-505(2).

[45] *Id.* § 155-9-302(d); Everett National Bank v. Deschuiteneer, 244 A.2d 196 (N.H. 1968).

[46] Section 2-302 of the Code has been used to invalidate a clause waiving defenses against an assignee of a consumer sales contract, Unico v. Owen, 50 N.J. 101, 232 A.2d 405 (1967); an excessive cash price or time-price differential, Frostifresh Corp. v. Reynoso, 54 Misc. 2d 119, 281 N.Y.S. 964 (Sup. Ct. 1966); a referral sales plan in an installment sales contract, *In re* State of New York, 52 Misc. 2d 39, 275 N.Y.S.2d 303 (Sup. Ct. 1966); and "dragnet" clauses retaining all the consumer owns — from tables to toothbrush — as collateral for the sale of any item bought subsequently, Williams v. Walker-Thomas Furniture Co., 350 F.2d 435 (D.C. Cir. 1965). For a general discussion of this matter see Blalock, *Unconscionable Consumer Installment Contracts,* 54 A.B.A.J. 279 (1968), and Davenport, *Unconscionability and the Uniform Commercial Code,* 22 U. MIAMI L. REV. 121 (1967).

[47] COLO. REV. STAT. ANN. § 14-17-1 *et seq.* (1963).

[48] *Id.* § 14-17-7(2)(a).

[49] *Id.* § 73-4-1 *et seq.*

authorized insurance agent, to sell credit life insurance to the borrower in an amount not exceeding the face amount of the loan. Such insurance must be written upon a declining term basis. The credit insurance statute specifically states that any gain to the lender in the form of an insurance premium "shall not be deemed to be an additional or further interest, discount or charge in connection with such loan and said lender may receive commissions on the premium paid for such insurance . . . ."[50] In other words, the present Colorado statute makes it clear that any credit insurance premium is not to be considered as an additional interest cost of the loan. As will be pointed out below, this provision will be changed by both the C.C.P.A. and the U.C.C.C. The credit insurance statute also states that a borrower is not required to purchase credit insurance from the lender as a condition precedent to the making of the loan.[51]

The Colorado statute governing assignments of wages[52] is consumer-oriented legislation in the sense that its requirements are so cumbersome to the creditor that the taking of wage assignments in consumer credit transactions is extremely unattractive. The statute provides that no employer or debtor shall honor any assignment of wages unless it is in writing and for a fixed definite part of the wages "earned or to be earned within 30 days from the date of such assignment."[53] A copy of every wage assignment must be given or mailed by registered mail to the employer within five days of its execution, with another copy to the wage earner. Each assignment must be recorded in the county of the wage earner's residence. These requirements are in addition to the standard filing requirements imposed by the Uniform Commercial Code.

II. THE CONSUMER CREDIT PROTECTION ACT

Because of the social implications of installment credit and the notoriety given to marginal credit practices, consumer legislation has been much in the spotlight recently. The most significant new piece of legislation is the Consumer Credit Protection Act passed by Congress last spring, eight years after its introduction by Senator Douglas, and signed by the President on May 29, 1968. The C.C.P.A. is divided into four parts: Title I covers truth in lending, Title II makes loan sharking a federal offense, Title III imposes restrictions on garnishment, and Title IV establishes a national commission on consumer finance.

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[50] *Id.* § 73-4-2.

[51] *Id.* § 73-4-3.

[52] *Id.* § 80-15-1 *et seq.*

[53] *Id.* § 80-15-1.

A. *Truth in Lending.*

Title I, Truth in Lending, constitutes a significant innovation in consumer legislation and an abrupt departure from the prior law of Colorado and other states. The gist of Truth in Lending is the requirement that all consumer loans,[54] consumer credit sales,[55] and "open end credit plans"[56] contain a disclosure of the "finance charge" as an "annual percentage rate."[57] As in the Uniform Commercial Code, credit transactions disguised as leases or assignments are covered.[58] Business and commercial transactions, stockbroker margin loans, transactions involving governmental agencies, and nonreal property credit transactions in excess of $25,000 are all excluded from coverage by Truth in Lending.[59] The "finance charge" is defined as the sum of all direct and indirect charges imposed by the creditor as an incident of the extension of credit, including (1) interest or time-price differential, (2) service or carrying charges, (3) loan fees, (4) fees for credit investigations, and (5) premiums for credit life insurance if the coverage by the insurance is a factor in approval by the creditor of the extension of credit.[60] By contrast, premiums for property or liability insurance need not be included as part of the finance charge if they are itemized by the creditor and the debtor is clearly informed of his right to choose where to buy such insurance.[61] Similarly, filing fees and taxes need not be included as part of the finance charge if they are itemized for the benefit of the debtor.[62] Although consumer real estate mortgages are covered by Truth in Lending, the finance charge for such transactions need not include such items as title insurance premiums, fees for various closing documents, escrows for future payments of taxes and insurance, appraisal fees, and credit reports.[63]

The social policy behind requiring disclosure of the finance

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[54] C.C.P.A. § 127.

[55] *Id.* § 128.

[56] *Id.* § 129. An "open end credit plan," which includes revolving charge accounts, revolving bank credit, and credit card transactions, is defined as "a plan prescribing the terms of credit transactions which may be made thereunder from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder." *Id.* § 103 (i).

[57] Truth in Lending only covers "creditors who regularly extend, or arrange for the extension of, credit for which the payment of a finance charge is required" where the money, property, or services which are the subject of the transaction "are primarily for personal, family, household, or agricultural purposes." *Id.* § 103(f), (h). This definition of consumer transactions reflects the language of the Code § 9-109(1).

[58] C.C.P.A. § 103(g). *See* Code § 1-201(37).

[59] C.C.P.A. § 104.

[60] *Id.* § 106.

[61] *Id.* § 106(c).

[62] *Id.* § 106(d).

[63] *Id.* § 106(e).

charge as an annual percentage rate is articulated in the congressional declaration of purpose appended to Truth in Lending:

> The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers.
>
> It is the purpose of this title to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.[64]

Truth in Lending is not a usury statute; it does not fix rates in any way. Like the 1933 Securities Act, it is a disclosure statute. As the declaration of purpose states, the intent of the statute is to encourage maximum competition among purveyors of consumer credit by requiring that they all disclose the price of their wares in a common language. The draftsmen presumably felt that only through a common language — annual percentage rate — can the consumer shop for credit in the same way he shops for durable goods.

All persons in the business of extending credit — commercial banks, finance companies, credit unions, department stores, automobile dealers, credit card franchisers — will now be required to disclose the cost of that credit as an annual percentage rate.[65] For example, an add-on or discount rate of 5 percent will have to be disclosed as a simple annual percentage rate of approximately 10 percent.[66] Similarly, a monthly revolving credit charge of 1½ percent will have to be translated into an annual percentage rate of 18 percent. The theory of Truth in Lending is that a uniform rate disclosure based on the declining principle balance rather than on the original balance, most clearly reflects the popular understanding of the cost of credit. The consumer, who is bombarded by a bewildering variety of ways to measure the cost of credit extended to him, will now have the benefit of a uniform measuring stick. Although some economists and businessmen argue that demand for consumer credit is insensitive to variations in credit costs, and that the consumer is concerned only with the amount of his monthly payments, it seems hard to deny that the consumer is extremely sensitive to fluctuations of cost in other segments of the market such as mortgage lending

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[64] *Id.* § 102.

[65] *Id.* §§ 127-29. Truth in Lending will become effective on July 1, 1969. *Id.* § 504(b).

[66] Under both add-on and discount methods of computing credit charges the rate is geared to the initial face amount of the credit, rather than to a declining balance. A 5 percent add-on rate approximates a 10 percent simple rate in an installment transaction because the consumer has, on the average, use of only half of the credit.

There has long been a taboo in the credit industry, stemming from the medieval days of Thomas Aquinas and Peter Abelard, that people will refuse to pay an interest rate in excess of 6 percent. Perhaps this is why monthly, add-on, and discount rates are used instead of a simple annual rate. If such is the case, Truth in Lending might put something of a damper on the demand for consumer credit.

rates and savings account returns. Truth in Lending will, for the first time, put short term consumer credit on a par with mortgage lending, savings accounts, and commercial loans, which have long involved the use of a simple annual percentage rate.

Perhaps the most heated criticism emerging from the voluminous committee hearings on Truth in Lending is that translation of finance charges into a simple annual percentage rate cannot be done mathematically. For example, the 1½ percent monthly service charge for credit cards or department store revolving accounts bears no necessary relation to the amount of time during which the consumer has use of the goods without paying for them. Most plans have a 30-day "grace period" during which payment may be made without any charge, and the service charge is in any case arbitrarily imposed against the balance of the account as of a particular billing date, a balance which fluctuates constantly rather than declines steadily. Therefore, the actual interest rate for revolving credit is often less than 1½ percent per month. Nevertheless, the proponents of the Act argued that disclosure of 18 percent per year is no less accurate than 1½ percent per month. Furthermore, the Federal Act allows department stores the choice of simply multiplying their monthly rate by 12 *or* using an average effective annual rate based upon their own cumulative experience.[67] Before Truth in Lending becomes effective on July 1, 1969, the Federal Reserve Board will publish final regulations and conversion tables to facilitate translation of different types of finance charges into an annual percentage rate.[68]

Truth in Lending requires disclosure with respect to three basic types of credit transactions: credit sales, consumer loans, and revolving credit ("open end consumer credit"). For credit sales, there must be a written disclosure somewhat as presently required under the two Colorado retail sales acts discussed above. The downpayment is subtracted from the cash price. To the resultant is added an itemized sum of taxes, property and liability insurance premiums, and official fees, none of which are part of the finance charge. This yields the "total to be financed."[69] Then there must be disclosure of the total finance charge over the life of the transaction, except in the case of first mortgages on homes.[70] Then the finance charge must

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[67] C.C.P.A. § 127(a)(5)(A).

[68] *Id.* § 107(d).

[69] *Id.* § 128(a)(5).

[70] *Id.* § 128(a)(6). The exception for first mortgages seems proper in that such obligations are so often refinanced or assumed by new purchasers that the debtor rarely pays the total finance charge over the life of the mortgage.

Truth in Lending also contains a unique provision allowing a homeowner 3 days to rescind a second mortgage on his dwelling. *Id.* § 125. This provision was apparently aimed at debt consolidation services which often take a second mortgage on the debtor's residence. Compare the 3-day "cooling-off" period for home solicitation sales under the U.C.C.C. mentioned at p. 700 *infra*.

be expressed as an annual percentage rate — not add-on, not discount, not monthly.[71] Then there must be a statement of the repayment schedule, late charges which may become payable, and a "clear identification" of any property in which the seller retains a security interest.[72] This requirement of a "clear identification" of collateral dovetails neatly with the unique Colorado Uniform Commercial Code provision which requires a specific itemization of consumer goods collateral in the security agreement.[73] Finally, prepayment according to the "Rule of 78" is authorized so long as the calculation is consistent with regulations of the Federal Reserve Board.[74]

For consumer loans, the disclosure requirements are similar. The proceeds of the loan available for use by the debtor are added to the charges not included in the finance charge to arrive at the "total amount to be financed."[75] The aggregate amount of the finance charges (except for first mortgages) must be disclosed, as well as the finance charge expressed as an annual percentage rate. Repayment schedules, late charges, and itemization of any security must also be disclosed, as with credit sales.[76]

In the realm of revolving bank credit, retail charge accounts, and credit cards, there must be the following disclosures before an account is opened: (1) the condition under which a finance charge may be imposed, including a statement of any "grace period"; (2) the method of determining the balance upon which the finance charge will be imposed; (3) the method of determining the amount of the finance charge; and (4) the annual percentage rate of the finance charge arrived at by multiplying the monthly rate by 12, or such an annual rate to be calculated according to Federal Reserve regulations as is based on the creditor's average experience.[77] At each billing period the bank, department store, or credit card company must transmit to the consumer a statement which, in addition to disclosing all activity in the account during the billing period, reiterates the disclosures which were made when the account was opened.[78]

Whether credit sales, consumer loans, or revolving credit is involved, disclosure of the finance charge as an annual percentage rate is the primary departure which the C.C.P.A. makes from prior Colorado law and established practice in the credit community. Fail-

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[71] *Id.* § 128(a)(7).
[72] *Id.* §§ 128(a)(8)-(10).
[73] COLO. REV. STAT. ANN. § 155-9-110 (1963).
[74] C.C.P.A. § 121.
[75] *Id.* § 129(a)(3).
[76] *Id.* § 129(a)(6)-(8).
[77] *Id.* § 127(a).
[78] *Id.* § 127(b).

ure by creditors to comply with the disclosure requirements of Truth in Lending exposes them to liability in the amount of twice the finance charge, attorneys' fees, and costs of any action by the consumer to enforce such liability.[79]

Truth in Lending also contains provisions relating to credit advertising. The basic rule is that where any specific credit terms are advertised, the creditor must practice what he preaches, and all of the material terms must be set forth. For example, no credit advertisement may state that a specific periodic installment amount can be arranged "unless the creditor usually and customarily arranges credit payments or installments for that period and in that amount."[80] The same rule applies to down payments.[81] Finally, no advertising may set forth any of the terms of an open end credit plan or any other consumer credit sales or loans unless nearly all of the disclosures required in connection with such a transaction are set forth in the advertisement.[82] If any advertisement purports to state a rate for the finance charge, it must be put in terms of an annual simple percentage.[83]

B. *Extortionate Credit Transactions.*

Title II of the C.C.P.A., which makes loan sharking a federal crime, distinguishes among (1) making extortionate extensions of credit,[84] (2) financing extortionate extensions of credit,[85] and (3) collection of extensions of credit by extortionate means.[86] An extortionate extension of credit is defined as "any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person."[87] The penalty for any violation is up to $10,000 or imprisonment for 20 years, or both.[88] In a prosecution under Title II, the fifth amendment may be suspended and immunity granted to any witness.[89] This is an obvious attempt to reach the bowels of organized crime through informants.

[79] *Id.* § 130.
[80] *Id.* § 142(1).
[81] *Id.* § 142(2).
[82] *Id.* §§ 143, 144.
[83] *Id.*
[84] *Id.* § 892.
[85] *Id.* § 893.
[86] *Id.* § 894.
[87] *Id.* § 891(6).
[88] *Id.* § 892(a).
[89] *Id.* § 895.

C. *Restrictions on Garnishment.*

Title III exempts from garnishment 75 percent of any individual's weekly wages, or $48, whichever is more.[90] This is a legislative attempt to promote greater uniformity in the bankruptcy laws[91] and to help relieve the consumer from the pressure of being forced into bankruptcy. The 75 percent exemption, which becomes effective on July 1, 1970, is substantially broader than the present Colorado exemption of 35 percent for non-heads-of-households and 70 percent for heads-of-households.[92] Furthermore, Title III prohibits for the first time any employer from discharging an employee because his wages have been subject to garnishment for any one indebtedness.[93] The requirement in the present Colorado garnishment statute that no garnishment may be issued except in aid of judgment[94] will be unaffected by the new law.[95]

D. *National Commission on Consumer Finance.*

Title IV of the C.C.P.A. establishes a national commission to "study and appraise the functioning and structure of the consumer finance industry, as well as consumer credit transactions generally."[96] The commission is given broad investigative powers to help dull sharp practices in the credit world.[97]

III. THE UNIFORM CONSUMER CREDIT CODE

The Consumer Credit Protection Act exempts from its disclosure requirements any class of credit transactions subject to a state law which requires disclosure substantially similar to the C.C.P.A. and which contains adequate provisions for enforcement.[98] The Revised Final Draft of the Uniform Consumer Credit Code recently adopted by the National Conference of Commissioners on Uniform State Laws has been tailored to conform to the federal act.[99] Therefore, subject to regulations to be promulgated by the Federal Reserve Board, adoption of the U.C.C.C. would provide Colorado and other states with a unique opportunity to preempt federal legislation and keep the

[90] *Id.* § 303.

[91] Article I, § 8 of the United States Constitution authorizes Congress to establish "uniform laws on the subject of bankruptcy throughout the United States."

[92] *Compare with* COLO. REV. STAT. ANN. § 77-2-4 (1963).

[93] C.C.P.A. § 304.

[94] COLO. REV. STAT. ANN. § 77-1-9(2) (1963).

[95] C.C.P.A. § 307(1).

[96] *Id.* § 404(a).

[97] *Id.* § 405.

[98] *Id.* § 123.

[99] One major change which had to be made in the Revised Final Draft of the U.C.C.C. was the possible inclusion of credit life insurance premiums as part of the finance charge to be disclosed as an annual percentage rate. *Compare* §§ 2.109, 2.202, 3.109 and 3.202 of the Tentative Final Draft (Working Draft No. 8) *with* those same sections of the Revised Final Draft.

regulation of consumer credit on the state level.[100] Viewed in this way, enactment by Congress of the Consumer Credit Protection Act, the disclosure provisions of which will not come into effect until July 1, 1969, provides a strong argument in favor of early enactment of the U.C.C.C.

In Colorado, the C.C.P.A. will alter both the small loan laws and retail sales acts as discussed above, none of which require disclosure of the finance charge as an annual percentage rate. In addition, the garnishment statute is modified by the C.C.P.A., as is the credit insurance statute. Rather than worry about which portions of the prior Colorado statutes are repealed and which are retained in light of the federal act, it seems an opportune time to enact the comprehensive U.C.C.C. as a needed house cleaning of statutes which, as pointed out above, are riddled with anomalies and inconsistencies in any case. If Colorado chooses to be among the first states to adopt the U.C.C.C., regulation of consumer credit can be retained at the state level without a sacrifice of uniformity, modernization and clarification can be injected into this vital area of the law, and the scattershot approach to consumer credit legislation will be replaced by a single comprehensive statute.[101]

The U.C.C.C. enters all three basic areas of consumer credit regulation — disclosure requirements, rate ceilings, and limits on creditors' rights.[102]

A. *Disclosure.*

As with the Consumer Credit Protection Act, the disclosure policy of the U.C.C.C. is to encourage "shopping for credit" by giving to consumers a common language by which to measure the cost of credit offered by different sellers and lenders. For both "consumer credit sales"[103] and "consumer loans"[104] an itemization of the trans-

[100] Even if the U.C.C.C. is adopted, those provisions of the C.C.P.A. covering extortionate credit transactions and establishing a national commission on consumer finance would continue in effect. The same is true of disclosure in credit advertising.

[101] For a somewhat outdated capsule summary of the U.C.C.C. by its principal draftsmen, see Jordan & Warren, *A Proposed Uniform Code for Consumer Credit,* 8 B.C. IND. & COM. L. REV. 441 (1968). For an excellent and up-to-date collection of articles on the U.C.C.C. see 68 COLUM. L. REV. 387-519 (1968).

[102] Beyond the scope of this discussion is Article 6 of the U.C.C.C. which provides an administrator for the U.C.C.C., defines his powers, and provides administrative remedies for enforcement. In Colorado, this administrator might be the Colorado Banking Commissioner. Article 7, which authorizes the formation and licensing of nonprofit debt-counseling corporations, will not be promulgated by the Commissioners on Uniform State Laws until after 1968.

[103] This is defined in U.C.C.C. § 2.104 to mean a sale of goods or services purchased primarily "for a personal, family, household, or agricultural purpose." A sale of an interest in land is not included unless the credit service charge exceeds 10 percent as an annual percentage rate.

[104] This is defined in U.C.C.C. § 3.104 to mean loans in which the debt is incurred primarily "for a personal, family, household, or agricultural purpose" and excluding loans of 10 percent or less upon the security of an interest in land.

action and a disclosure of the annual percentage rate of the finance charge is required, as under the Consumer Credit Protection Act. The itemization requirement for a consumer credit sale is basically the same as that required under the federal act.[105] The same is true for disclosure with respect to consumer loans.[106] As with the Consumer Credit Protection Act, any misleading advertising is prohibited.[107] Going beyond the federal act, however, the U.C.C.C. also contains express disclosure provisions with respect to refinancing of credit sales,[108] consolidation of separate credit sales[109] or consumer loans,[110] and deferral charges.[111] As with the federal act, detailed disclosure of the terms of revolving credit must be given at the time a revolving charge account or revolving loan account is opened, as well as at the time of each billing cycle.[112]

Another rather unique departure under the U.C.C.C. is the requirement of full disclosure of the terms of bona fide consumer leases.[113] The lessor must provide to the lessee: (1) a brief description of the goods covered; (2) the amount of any payment required at the inception of the lease; (3) the amount payable for official fees; (4) the amount and description of other charges not included in the rental payments; (5) a description of any insurance; (6) payment schedules; (7) a description of the lessee's right of termination, if any; and (8) a statement of any liabilities imposed upon the lessee at the end of the term.[114]

In order to conform to the Consumer Credit Protection Act, the other disclosures required under the U.C.C.C. are in part patterned after the federal act, particularly in the requirement of annual percentage rate translation. The beauty of the U.C.C.C. is that it offers an opportunity to preempt federal regulation in this vital area.

B. *Rate Ceilings.*

A major change from present Colorado law would be imposition by the U.C.C.C. of general rate ceilings with respect to consumer

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[105] *See* the discussion at pp. 689-90 *supra*. *See also* U.C.C.C. § 2.306.

[106] *See* U.C.C.C. § 3.306. Calculation of the credit service charge for credit sales is found at § 2.304, and calculation of the loan finance charge for consumer loans is found at § 3.304.

[107] U.C.C.C. §§ 2.303, 3.303.

[108] *Id.* § 2.307 requires disclosure, at the time of the refinancing, of (1) the unpaid balance before refinancing, (2) rebates to which the buyer might otherwise have been entitled, (3) any additional charges in connection with the refinancing, (4) the amount financed under the refinancing, (5) the amount of the credit service charge, (6) the unpaid balance, and (7) the repayment schedule under the financing.

[109] *Id.* § 2.308.

[110] *Id.* § 3.307.

[111] *Id.* § 3.308.

[112] *Id.* § 3.309.

[113] The term "consumer lease" is defined in U.C.C.C. § 2.106.

[114] U.C.C.C. § 2.311.

credit sales and consumer loans. If the U.C.C.C. is adopted in Colorado, a general usury schedule for consumer credit will be applicable for the first time. On the other hand, the rate ceilings imposed by the U.C.C.C. distinguish between sales and loans, thus paying lip service to the time-price doctrine.[115] In setting relatively high rate ceilings on consumer credit transactions, instead of attempting to fix rates, the draftsmen of the U.C.C.C. intended to avoid the rigid inflexibility which could result from rate ceilings set too near the market. In addition, the U.C.C.C.'s policy of encouraging competition and easy entrance into the consumer credit field[116] would be thwarted by setting the rate ceilings too low.

Maximum charges are set for credit sales, consumer loans, and revolving credit. With respect to the finance charge for credit sales other than revolving charge accounts, the ceiling is set at 36 percent for that part of the unpaid balance which is $300 or less, 21 percent for that part of the unpaid balance between $300 and $1,000 and 15 percent for that part of the unpaid balance in excess of $1,000; in the alternative, the creditor is authorized to charge a flat rate of 18 percent on all amounts.[117] For revolving charge accounts the ceilings are 24 percent on balances of $500 or less and 18 percent on balances in excess of $500.[118] There are two classes of consumer loans: supervised loans and nonsupervised loans. Supervised loans are defined as those where the interest rate is in excess of 18 percent.[119] A supervised lender must obtain a license from the appropriate state official based upon his "financial responsibility, character and fitness."[120] The "character and fitness" criterion for entry into the consumer credit market has been attacked by the American Bankers Association as too liberal and is the primary reason that the ABA has not endorsed the U.C.C.C.; in Colorado, however, this "free entry" provision makes no change in the present law, except that the ceiling on nonsupervised rates is increased from 12 percent to 18 percent.[121]

The rate ceiling on supervised loans, including revolving loan accounts, is the same as for credit sales: 36 percent for that part of the

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[115] The draftsmen of the U.C.C.C. state that sales credit and loan credit are treated separately because of the danger that the courts of a state which had not adopted the U.C.C.C. might otherwise be tempted to rely on its rejection of the time-price doctrine. *See* Prefatory Note to Tentative Final Draft of UNIFORM CONSUMER CREDIT CODE, Extra Edition, CCH INSTALLMENT CREDIT GUIDE, May 13, 1968, at xix. This seems to be a rather hollow rationale.

[116] *See* U.C.C.C. § 2.201, Comment 1.

[117] U.C.C.C. § 2.201(2).

[118] *Id.* § 2.207(3).

[119] *Id.* §§ 3.501(3), 3.201(1).

[120] *Id.* § 3.503(2). Organizations such as national or state banks are exempt from the licensing requirements as "supervised financial organizations." *Id.* § 1.301(17).

[121] *See* COLO. REV. STAT. ANN. § 73-3-5(2) (1963).

unpaid balance which is $300 or less; 21 percent for that part of the unpaid balance between $300 and $1,000; 15 percent for that part of the unpaid balance which is more than $1,000; or a flat rate of 18 percent of all balances.[122] Multiple agreements to obtain a higher rate of interest on supervised loans are prohibited.[123] In addition, a supervised loan the principal of which is $1,000 or less may include neither a security interest in real property[124] nor a provision for attorneys' fees.[125] The rate ceiling on a nonsupervised loan, including revolving loan accounts, is set at 18 percent.[126]

In all credit sales and loans, delinquency charges are limited to the lower of $5 or 5 percent of the unpaid amount of any installment not paid within 10 days after its due date.[127] In the alternative, the parties are free to contract for a deferral charge, which must be disclosed in advance,[128] a refinancing charge not in excess of the regular rate ceilings,[129] and a finance charge on consolidation, subject to the regular rate ceilings.[130] Finally, rebate upon prepayment is in general calculated according to the "Rule of 78."[131] Neither rates for credit life, health, and accident insurance nor limits on entry into the insurance field are imposed by the U.C.C.C., although it does regulate credit insurance in a broad way. Article 4 of the U.C.C.C. covers the various types of insurance which may be offered by the creditor in connection with a consumer sale, consumer lease, or consumer loan. It authorizes the providing of credit life, accident, and health insurance by the creditor[132] so long as the amount charged by the creditor does not exceed the premium charged by the insuror[133] and so long as ratable rebate upon prepayment is allowed.[134] With respect to credit life insurance, the originally scheduled term of the insurance must extend until maturity of the debt,[135] and the amount of insurance must not initially exceed the debt.[136] With respect to property insurance, the amount, terms, and conditions of the insur-

[122] U.C.C.C. § 3.508(2).

[123] *Id.* § 3.509.

[124] *Id.* § 3.510(1).

[125] *Id.* § 3.511(1).

[126] *Id.* § 3.201(1), (4).

[127] *Id.* §§ 2.203, 3.203. The U.C.C.C. contains no express provision prohibiting acceleration clauses in consumer promissory notes unless a court were to find such a clause "unconscionable." *See id.* § 5.107.

[128] *Id.* §§ 2.204, 3.204.

[129] *Id.* §§ 2.205, 3.205.

[130] *Id.* §§ 2.206, 3.206.

[131] *Id.* §§ 2.210(3), 3.210(3).

[132] *Id.* § 4.104(1).

[133] *Id.* § 4.107(1).

[134] *Id.* § 4.108(1).

[135] *Id.* § 4.201(2).

[136] *Id.* § 4.202(1)(a).

ance must be reasonable in relation to the debt.[137] With respect to liability insurance, no such policy may be charged against the debtor unless the insurance "covers a substantial risk of liability arising out of the ownership or use of property related to the credit transaction."[138] Since it requires that credit life insurance premiums be included as part of the finance charge if insurance coverage is a factor in the approval of the credit, Article 4 of the U.C.C.C. alters the present Colorado credit insurance statute,[139] which automatically excludes them.

C. Limits on Creditors' Rights.

In addition to disclosure requirements and rate ceilings, the U.C.C.C. contains a number of provisions restricting creditors' rights in consumer credit transactions.[140] The draftsmen appear to recognize that concepts which play a vital role in commercial business transactions should not automatically be carried over into the realm of consumer credit.[141] The Uniform Commercial Code begins to draw such a distinction in its sections especially protective of the consumer[142] and in its deference to conflicting state consumer credit legislation.[143] The final step is taken by the U.C.C.C. in a number of wide-ranging provisions designed to restrain overreaching by lenders and sellers in the consumer credit realm.

1. No Waiver of Debtors' Rights

The U.C.C.C. provides that none of the rights and benefits given to a consumer by the statute can be waived except as expressly provided.[144] This is an extension of a similar provision in the Uniform Commercial Code.[145]

2. Negotiable Consumer Notes Outlawed and Assignee Subject to Defenses

A common problem which confronts consumers arises because of the commercial practice of selling or "discounting" the consumer's promissory note. The merchant sells the note to a bank or other lending agency at a discount and thereby has a steady cash flow with which to run his business. The consumer, however, if he

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[137] *Id.* § 4.301.

[138] *Id.* § 3.303.

[139] COLO. REV. STAT. ANN. § 73-4-3 (1963). *See* text accompanying note 51 *supra.*

[140] U.C.C.C. §§ 2.401 *et seq.*, 3.401 *et seq.* These provisions do not apply to sales of land or loans primarily secured by land.

[141] For a good general discussion of this area see Helstad, *Consumer Credit Legislation; Limitations on Contractual Terms,* 8 B.C. IND. & COM. L. REV. 519 (1967).

[142] *See* discussion at pp. 684-85 *supra.*

[143] *See* COLO. REV. STAT. ANN. §§ 155-9-201, -203(2) (1963).

[144] U.C.C.C. § 1.107(1).

[145] *See* COLO. REV. STAT. ANN. § 155-9-501(3) (1963).

has defective merchandise, finds that he cannot threaten to hold back payment until the merchandise is made good because the merchant is no longer the one to whom payment need be made. The consumer is thus put in the posture of having to pay for the defective merchandise while trying to have the defect remedied. In order to alleviate this consumer problem, the U.C.C.C. provides that a seller or lessor may not take a negotiable instrument other than a check in connection with a nonagricultural consumer credit transaction.[146] The result of this provision is to prevent the assignee from being a holder in due course who would otherwise take the note free from defenses which could be asserted by the consumer. A holder is not in good faith if he takes a negotiable promissory note made by a consumer,[147] although a holder who in good faith does not know of the paper's consumer origin may qualify as a holder in due course who takes free of defenses. As a corollary to the negotiable note provision, an assignee of consumer credit paper is subject to all real and personal defenses or claims of the buyer or lessee, regardless of any waiver provision.[148] These limitations do not apply with respect to consumer loans.

3. Balloon Payments Prohibited

The balloon payment, defined by the U.C.C.C. as a final installment on a loan or sale which is more than twice as large as the average of the other payments, is prohibited unless the buyer or borrower has the right to refinance the amount of the balloon payment at the time it is due without penalty and upon terms no less favorable than the terms of the original note.[149] An exception is provided when the repayment schedule is adjusted to seasonal income of the consumer.[150]

4. Limitations on Security

Although there is no limit on purchase money security, an installment seller is prohibited from taking a security interest in other

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[146] U.C.C.C. § 2.403.

[147] *Id.* "Since the prohibition against negotiable notes in consumer financing will be well-known in the financial community after enactment of this Act, professional financers buying consumer paper will normally not qualify as holders in due course with respect to notes taken by dealers in violation of this section and negotiated to them." *Id.* § 2.403, Comment.

[148] *Id.* § 2.404, Alternative A. Alternative B provides that an assignee may take free of defenses when there is an agreement by the buyer or lessee not to assert defenses and when the consumer does not raise a defense, in writing, within 3 months after the creditor's notice of the assignment.

Both of these alternatives dovetail with § 9-206 of the Code which authorizes an agreement not to assert defenses against an assignee "subject to any statute which establishes a different rule for buyers or lessees of consumer goods." COLO. REV. STAT. ANN. § 155-9-206(1) (1963).

[149] U.C.C.C. §§ 2.405, 3.402. The "balloon" is often used as a device by which the consumer can be forced to refinance the balance at a higher rate. A parallel section provides that a nonagricultural consumer lease may not provide that a performing lessee shall be liable for an amount upon termination of the lease in excess of twice the average rental. *Id.* § 2.406.

[150] *Id.* §§ 2.405, 3.402.

property of the buyer except (1) in land to which the goods sold are affixed and where the debt is more than $1,000, (2) in goods upon which services are performed or to which the goods sold are annexed and where the debt is more than $300,[151] and (3) under the cross-collateral provisions discussed below. The lessor of a consumer lease may not take a security interest in any property of the lessee, including the leased property.[152] Except for the prohibition against real property security in a supervised loan of less than $1,000,[153] there are no security limitations with respect to consumer loans under the U.C.C.C.

A closely related section covering consumer sales provides that a consumer credit seller may secure the debt arising from a subsequent sale (1) by contracting for a security interest in other property if as a result of a prior sale it is still subject to an outstanding security interest in favor of the seller, or (2) by contracting for a security interest in the property subsequently sold as security for the previous debt.[154] As a prohibition against "cross-collateral clauses" under which no collateral is released until debts arising from all sales are paid,[155] the U.C.C.C. establishes a first-in-first-out rule for both installment sales[156] and revolving charge accounts.[157]

5. No Assignment of Earnings

The U.C.C.C. flatly prohibits assignments of earnings as security for a consumer sale, consumer lease, or consumer loan.[158] These provisions would repeal entirely the already terribly cumbersome Colorado statute governing wage assignments.[159]

6. Restrictions on Promissory Notes

In addition to the prohibition against negotiability in consumer promissory notes, the U.C.C.C. also outlaws cognovit notes[160] and either prohibits attorneys' fee clauses altogether[161] or limits them to

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151 *Id.* § 2.407(1).

152 *Id.* § 2.407(2).

153 *Id.* § 3.510.

154 *Id.* § 2.408(1).

155 For an excellent example of such a clause in operation with devastating effect see Williams v. Walker-Thomas Furniture Co., 350 F.2d 445 (D.C. Cir. 1965).

156 U.C.C.C. § 2.409(1).

157 *Id.* § 2.409(2).

158 *Id.* §§ 2.410, 3.403.

159 COLO. REV. STAT. ANN. § 80-15-1 *et seq.* (1963). *See* text accompanying notes 52 & 53 *supra.*

160 U.C.C.C. § 2.415 (notes evidencing sales), § 3.407 (notes evidencing loans). Although there is no statute or case in Colorado expressly condemning confessions of judgment by consumers, some Colorado courts refuse to enforce such clauses. The Code is neutral on the subject of cognovit notes. *See* COLO. REV. STAT. ANN. § 155-3-112(1)(d) (1963) and Official Comment 2 thereto.

161 Alternative A, U.C.C.C. §§ 2.413, 3.404.

15 percent of the unpaid debt after default,[162] depending on which alternative is adopted by the state. Finally, no default charge may be imposed except for reasonable expenses incurred in realizing on a security interest.[163]

7. Restrictions on Deficiency Judgments

With respect to a consumer credit sale, if the seller repossesses goods which had a cash price of $1,000 or less, he is prohibited from seeking a deficiency judgment.[164] Conversely, if the seller elects to bring an action against the buyer, he is prohibited from repossessing or levying execution upon the collateral.[165] This doctrine of election, which does not apply to consumer loans, is directly contrary to the Uniform Commercial Code, which authorizes cumulative remedies and would presumably continue to apply to consumer loans.[166]

8. Restrictions on Garnishment.

With respect to garnishments, the U.C.C.C. goes beyond the Consumer Credit Protection Act in providing that no employer may discharge any employee because he has received garnishment summonses, no matter how many.[167]

9. Limitations on Referral Sales and Home Solicitation Sales

The U.C.C.C. outlaws the referral sale device[168] and provides a 3-day "cooling-off" period during which any home solicitation sale may be rescinded in writing by the consumer.[169]

CONCLUSION

The revolution in consumer credit turns on the assumption that the consumer is a special breed of debtor who requires protection which is not necessarily appropriate for business or commercial debtors. The Federal Consumer Credit Protection Act takes a giant step in attempting to bring about this protection by requiring disclosure of consumer credit finance charges as an annual percentage rate.

The Uniform Consumer Credit Code also adopts the above method of disclosing credit and in addition makes other changes from present Colorado law which are especially significant from the consumer's point of view. The provision outlawing negotiable promissory notes and its significance to the consumer have already been dis-

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[162] Alternative B, U.C.C.C. §§ 2.413, 3.404.

[163] U.C.C.C. §§ 2.414, 3.405.

[164] *Id.* § 5.103(2).

[165] *Id.* § 5.103(6).

[166] COLO. REV. STAT. ANN. § 155-9-501(1) (1963).

[167] U.C.C.C. § 5.106.

[168] *Id.* § 2.411.

[169] *Id.* § 2.502(1). Compare the 3-day "cooling-off" period for second mortgages on residences under the C.C.P.A., discussed at note 70 *supra*.

cussed.[170] Another provision in the U.C.C.C. which is especially important to the working consumer is that which prevents an employer from discharging an employee because of garnishee summonses, no matter how many the employer has received regarding that employee.[171] This assures the debtor that he will not lose his means of repaying his debt if he falls in arrears on it. The creditor, however, still may use the garnishment method of collecting his debt.

A third U.C.C.C. provision which should be of great help to protect the consumer who does not understand the workings of the business world is the inclusion of a 3-day "cooling-off" period during which any home solicitation sale may be rescinded by the consumer.[172] The intent is of course to help the housewife who falls into the clutches of a high pressure door-to-door salesman and in the calm light of morning, or more likely when her husband comes home, decides she really does not want the item after all.

These three provisions are representative of the attempt of the U.C.C.C. to protect consumers, especially that segment of the consumer population which most needs help, the people who are not aware of the pitfalls which may await them in credit dealings. Since the U.C.C.C. seems to accomplish this protection while keeping consumer credit regulation at the state rather than the federal level, it is hoped that the Colorado legislature will be persuaded to pass this important statute.

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[170] *See* text accompanying note 146 *supra.*

[171] U.C.C.C. § 5.106.

[172] *Id.* § 2.502(1).