# CONSUMER PROTECTION

LEGISLATIVE COMMISSION OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

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BULLETIN NO. 91

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Senate Concurrent Resolution No. 25—Committee on Commerce

FILE NUMBER 100

SENATE CONCURRENT RESOLUTION—Directing the legislative commission to study the total effect of the Uniform Consumer Credit Code as enacted in other states.

WHEREAS, A bill has been introduced (Senate Bill No. 170) for the enactment of the Uniform Consumer Credit Code; and

WHEREAS, Federal law (15 U.S.C. § 1633) provides that states which enact a law similar to the Federal Consumer Credit Protection Act and provide for adequate provision for enforcement may be exempted from such Act by regulation adopted by the Board of Governors of the Federal Reserve System; and

WHEREAS, There is great uncertainty whether such board will exempt the State of Nevada as provided if Senate Bill No. 170 is enacted into law; and

WHEREAS, The cost of administering and enforcing the Uniform Consumer Credit Code, if enacted, is very difficult to ascertain; now, therefore, be it

*Resolved by the Senate of the State of Nevada, the Assembly concurring,* That the legislative commission is hereby directed to:

1. Investigate and study the effects of the Uniform Consumer Credit Code as and if enacted by other states to ascertain the conditions and circumstances under which the Board of Governors of the Federal Reserve System will exempt states from the requirements of the Federal Consumer Credit Protection Act.
2. Ascertain, if possible, the estimated cost of administering and enforcing the Uniform Consumer Credit Code, if enacted into law, in such a manner as would qualify the State of Nevada for exemption from such federal Act.
3. Resolve any other uncertainties presented in the preamble of this resolution or which may arise in conducting this investigation and study.
4. Submit its written report, including findings and recommendations, to the 56th regular session of the legislature of the State of Nevada.

1969

Senate Concurrent Resolution No. 30—Senators Fransway and Slattery

FILE NUMBER 146

SENATE CONCURRENT RESOLUTION—Directing the legislative commission to study methods to protect the consumer.

WHEREAS, Modern business practices are so complicated that the average consumer does not understand the nature and extent of the business transactions in which he is involved; and

WHEREAS, As a result of the consumer's lack of understanding or the lack of choices offered him, the consumer often finds that he has purchased unwanted, unacceptable or inferior products or services or has placed himself in a precarious financial situation with little or no recourse available to him; and

WHEREAS, Certain business enterprises take unwarranted advantage of the complexities of our society and the average individual consumer is placed in an unfair bargaining position when pitted against the multiphased corporate seller; and

WHEREAS, The legislature is representative of the people and has the responsibility of protecting those people who are not in a position to protect themselves; now, therefore, be it

*Resolved by the Senate of the State of Nevada, the Assembly concurring,* That the legislative commission is hereby directed:

1. To conduct a study of methods for providing protection to the consumer, including but not limited to studies involving truth in lending, truth in packaging, the safety and efficacy of drugs and related devices, deceptive sales practices and warranties, and automobile and appliance repairs; and
2. To report the results of such study and make recommendations for legislation to the 56th session of the legislature.

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## REPORT OF THE LEGISLATIVE COMMISSION

To The Members of the 56th Session of the Nevada Legislature:

In order to comply with Senate Concurrent Resolution No. 25 and Senate Concurrent Resolution No. 30 of the 55th Session of the Nevada Legislature, the legislative commission appointed a subcommittee to make a study of methods of affording the Nevada consumer appropriate statutory protection against unfair and unethical business practices, where such practices are found to disturb the equilibrium of the marketplace. The members of the subcommittee were:

Senator John Fransway
(Chairman)
Winnemucca, Nevada

Assemblyman Mary Frazzini
(Vice-Chairman)
Reno, Nevada

Senator Chic Hecht
Las Vegas, Nevada

Assemblyman Donald R. Mello
Sparks, Nevada

Senator Emerson Titlow
Tonopah, Nevada

Assemblyman Arthur Espinoza
Henderson, Nevada

Assemblyman Thomas M. Kean
Reno, Nevada

The subcommittee submitted its report with suggested legislation to the legislative commission, which accepted the report. The report is transmitted to you for your possible action. The legislative commission expresses its thanks to the subcommittee members for their contributions of time and knowledge.

Respectfully submitted,

LEGISLATIVE COMMISSION
State of Nevada

Carson City, Nevada
October, 1970

## ACKNOWLEDGMENTS

The legislative commission's subcommittee for study of consumer protection would like to express its appreciation to the following individuals for their assistance to the subcommittee in the capacity of consultants in the preparation of this report:

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Reno, Nevada

## SUMMARY OF RECOMMENDATIONS

The legislative commission's subcommittee for study of consumer protection submits the following findings and recommendations for the consideration of the 56th Session of the Nevada Legislature:

1. Unsolicited Merchandise Sent Through the Mails. The subcommittee recommends that such merchandise be declared the free gift of the sender, which may be retained without obligation by the recipient.

2. Record Clubs and Book Clubs. The subcommittee recommends that legislation be adopted prohibiting the use of the "negative order" whereby books and records are sent to club members if they do not notify the seller that they do not want the current club "selection."

3. Door-to-Door Solicitations. The subcommittee recommends stricter enforcement of local licensing provisions and the adoption of a three-day right of rescission for consumers making purchases from direct solicitors.

4. Regulation of Closing-Out and Fire Sales. The subcommittee recommends stricter local enforcement of closing-out and fire sales under Nevada's false and deceptive advertising statute.

5. Odometer Rollbacks. The subcommittee recommends adoption of a statute prohibiting odometer rollbacks and requiring the seller of a vehicle to record its mileage on pertinent transfer papers at the time of sale.

6. Redemption for Cash of Trading Stamps. The subcommittee recommends that consumers be permitted to redeem their stamp books for cash at trading stamp redemption centers.

7. Service Station Price Lists. The subcommittee recommends that automotive service stations be required to post, in conspicuous places, price lists of common services rendered on the premises.

8. Sales Rain Checks. The subcommittee recommends that retail establishments advertising sales items without specifying a limited quantity be required to meet consumer demand of such items for the duration of the sale. If the available supply is depleted, "rain checks" should be issued for later purchase of the item at sale price or like merchandise of equal or greater value substituted to meet demand at the price advertised for the original item.

9. Referral Selling. The subcommittee recommends that referral selling be banned in Nevada.

10. Uniform Consumer Credit Act. The subcommittee recommends that the Uniform Consumer Credit Act not be adopted in Nevada. Instead, it recommends revision of current consumer credit statutes to bring them into compliance and uniformity with the Federal Consumer Credit Protection Act of 1968 and Regulation Z of the Board of Governors of the Federal Reserve System.

11. Consumer Affairs Division in Attorney General's Office. The subcommittee recommends the designation of two inspectors in the attorney general's office to devote their time exclusively to the enforcement of Nevada's consumer protection laws.

12. Consumer Education. The subcommittee recommends greater emphasis on consumer education in Nevada's public school system through the integration of consumer-oriented lessons in traditional subjects. The subcommittee is opposed to the concept of mandatory consumer education courses at any level in Nevada's school systems.

## SCOPE OF PROBLEM

At first glance, the work of the legislative commission's subcommittee for study of consumer protection seems clearly delineated in the two resolutions (S.C.R. 25 and S.C.R. 30) authorizing the study of consumer problems. Senate Concurrent Resolution 25 directs the legislative commission (and therefore the subcommittee) to study the Uniform Consumer Credit Code "to ascertain the conditions * * * under which the Board of Governors of the Federal Reserve System will exempt states from the requirements of the Federal Consumer Credit Protection Act." The resolution further directs the commission to ascertain the administrative and enforcement costs involved in the enactment of the Uniform Consumer Credit Code (U3C). Senate Concurrent Resolution 30 directs the commission to study consumer protection in the areas of truth in lending, truth in packaging, safety and efficacy of drugs and related devices, deceptive sales practices and warranties, and automobile and appliance repairs. These two resolutions, however, provide less definite guidelines for the conduct of the subcommittee's work than their language seems to imply.

Upon closer scrutiny, the construction of the two resolutions reveals phrases which tend to broaden the scope of inquiry considerably. S.C.R. 25 specifically permits the commission to "resolve any other uncertainties * * * which may arise * * *" in the study of U3C. This wording would seem to authorize the subcommittee to investigate the merits of the code from a consumer standpoint. S.C.R. 30, in enumerating the areas of general consumer study, states that the commission is not limited to the topics named in the text of the resolution. The mandate contained in the two resolutions is largely open-ended.

The subcommittee, faced with vague guidelines, determined those areas in which it felt it could most effectively expend its resources. It obviously could not review every area of consumer activity, or it would minimize its effectiveness and likely lose its sense of direction.

The potential areas of study were almost infinite. The consumer is involved with government and taxation, inflation, insurance, utilities, the commercial marketplace, environmental quality and other problems ranging across the spectrum of human endeavor. A brief outline of some of the more obvious consumer affairs, which might have come within the purview of the subcommittee, is listed below:

I. The Consumer in the Marketplace
   A. Truth in advertising
   B. Truth in packaging
   C. Truth in pricing
   D. Fraud in the inducement
   E. Mail solicitations
      1. Unordered merchandise
      2. Unauthorized credit cards
   F. Telephone solicitations
   G. Door-to-door salesmen

II. The Sale and the Contract
   A. Readability of contract
   B. Referral selling
   C. Truth in lending
   D. Uniform Consumer Credit Code
   E. Credit life insurance and incidental charges
   F. Cognovit notes
   G. Maximum interest rates
   H. Lifetime contracts
   I. Acceleration clauses
   J. Fraud in the contract terms
   K. Cooling-off period
   L. Add-on contracts
   M. Balloon contracts
   N. Security deposits

III. Servicing the Product
   A. Warranties--Express and implied
   B. Guarantees
   C. Incompetent servicing--Licensing
   D. Lo-balling
   E. Replacing nondefective parts
   F. Itemization of costs
   G. Mechanics' liens
   H. Unsatisfactory service

IV. Debts, Repossession and Collection
   A. Return of unsatisfactory merchandise
      1. Effect on contract
      2. Refund if C.O.D.
   B. False debts--Death vultures
   C. Altered contracts
   D. Small claims court
   E. Holder in due course

F. Kickbacks by finance companies
G. Fair notice of repossession--Forceful repossession
H. Seller's liability for damage to property of debtor
I. Auction sales of repossessed goods
J. Liens on property
K. Garnishments and wage assignments
L. Sewer summonses
M. Default judgments
N. Cease-and-desist orders
O. Repossession because of "insecurity" of property
P. Dunning notices simulating official documents
Q. Deficiency judgments
R. Consumer remedies and recovery

V. Consumer Safety
  A. Food and drugs
    1. Sanitary inspections
      a. Restaurants
      b. Packing and slaughtering houses
      c. Drug manufacturing plants
    2. Licensing
    3. Adulteration, additives and hazardous substances legislation
  B. Weights and standards
  C. Tire safety
  D. Medical frauds and mail-order doctoring
  E. Combination drugs and ineffective drugs
  F. Wigs and cosmetics
  G. Labeling requirements
  H. Automotive safety devices
  I. Clothes dryers and washing machines
  J. Harmful chemicals, restricted sale
  K. Safety glass in sliding or revolving glass doors
  L. Regulation of high-voltage distribution lines
  M. Hearing aids
  N. Patent medicines
  O. Harmful toys
  P. Flammable fabrics
  Q. Pesticides

VI. Tenants
  A. Notice of rent increase
  B. Termination of lease by tenant upon due notice
  C. Limitation on rent increase under lease
  D. Liability for repairs
  E. Regulation of deposits
  F. Eviction and constructive eviction

G. Pest control
H. Obligation for maintaining furnaces, plumbing, etc.
I. Subletting
J. Arbitration of disputes
K. Prevention of fire hazards
L. Statewide building code

VII. Consumer Protection Agency
A. Attorney general's office
B. Separate executive department
C. Appropriate functions
1. Education and legal counsel
2. Inspection
3. Regulation and enforcement of rules and standards, class actions
4. Authority to bring consumer suits, issue cease-and-desist orders
5. Licensing

VIII. Consumer Education
A. Required courses in high school
B. Consumer protection agency
1. Publications
2. Radio and television series
3. Lectures

While the scope of subject matter outlined above is extensive, it is by no means exhaustive. Still, it should illustrate the necessity for clearly defining the operational boundaries of the subcommittee's assignment. Almost each of the items listed above could serve as a separate topic of review, consuming the entire time and energies of the subcommittee. The complexities of the U3C alone would challenge the resources of the subcommittee if pursued in depth.

As a result, the subcommittee established priorities and developed a scheme for maximizing its research capabilities. In doing so, it considered some of the following alternatives:

1. The subcommittee might have restricted itself to the consideration of the subject areas specifically named in the two resolutions. This approach, however, would have required some refinement to be manageable.

2. The subcommittee might have proceeded on the basis of examining consumer problems involving major items of expense--giving top priority to housing problems, the purchase and repair of automobiles, and other big ticket items.

3. The subcommittee could have opted to study issues involving consumer safety, as opposed to financial interests, and to set priorities based upon the degree of danger involved in various products.

4. The subcommittee could have selected a series of isolated consumer problems particularly applicable to Nevada, or of especial interest to its membership, and proceed to examine them seriatim.

The subcommittee opted for the last approach and proceeded to consider a number of subjects of especial interest to its members. Hearings were held and the conclusions presented in this report reflect the combined thinking of both the committee and the interested public in attendance.

## CORRELATION IN CONSUMER LEGISLATION

Controversies are almost never one-sided. Virtue is not the monopoly of the Liberal or Conservative, the Republican or the Democrat, or the retailer or consumer. Few, if any, public contests confront light against dark, innocence against corruption. Most issues which arise involve the exercise of options, with judgment playing the decisive role in the direction policy may take. Alternatives are selected, not because they are right or wrong, but because, under given circumstances, they appear to provide the best approach available. To men of conscience, the imputation of vile motives to those of different persuasion is an unworthy response to policy disagreements. But to tolerate countervailing opinions is not to justify precipitous action by governmental officials. Whenever the state, through its lawmakers or administrators, enters into the realm of policymaking to correct alleged abuses affecting its citizenry, it should always consider both sides of a question, ponder both the favorable and adverse aspects of a proposed policy, and weigh the arguments and defenses of all parties to a public controversy.

Governmental regulation and control of the economy is an area particularly susceptible to rash and ill-considered legislation, so that due caution should be exercised before intervention is undertaken. The relationship between buyer and seller is highly complex, filled with subtle distinctions which call for careful examination prior to any attempted readjustment of the rights and duties of both merchants and customers. Abrupt and radical innovations may prove unduly harsh and restrictive, destroying the equilibrium of the marketplace while trying to remedy a social ill of minor significance. If changes are to be made in traditional business relationships and concepts, they should be achieved in an orderly and gradual fashion. Sudden and extreme governmental intervention may prove more disruptive of the economy than it can withstand. Remedial legislation should restore a healthful situation, not aggravate a sick condition. As Ernst Freund has asserted, it is "the function of legislation to remedy grievances and correct abuses, not to reconstruct society *de novo* or to force standards for which the community is not prepared."[1] To Freund,

> [When] the law combats tendencies in order to check evil it may easily hinder legitimate activity. If free action is as essential to the interests of the community as protection from harm, the remoteness or conjectural character of the danger is in itself a strong argument against the policy of legislative interference and, if liberty is held to be a constitutional right, against its validity.[2]

No consumer legislation should be enacted which deprives business of its legitimate rights and interests in the marketplace.

It should be recognized, however, that business is not alone in having a just claim of interest in the undisturbed operation of the marketplace. Trade requires the presence of two primary actors--a buyer and a seller. The buyer, or consumer, is involved in commerce only sporadically, as the need arises for him to purchase particular commodities for consumption. The seller, on the other hand, customarily makes a vocation of barter. His livelihood depends upon his business expertise. At best, the buyer and seller are unequal in their abilities to deal with one another. Indeed, in today's specialized commercial world, the consumer is at a decided disadvantage vis-a-vis the retailer or salesman. Frequently, he cannot inspect the contents of a package he purchases. Appliances he may need are likely to be so complex that his "right" to inspect them for quality and veracity of sales claims is meaningless unless he happens to be a technician qualified to assess them. Yet, in most jurisdictions, the ancient doctrine of caveat emptor continues to dominate and influence our law of commercial transactions. The consumer is still presumed to be sufficiently knowledgeable to protect himself from fraud and abuse in the marketplace. Only recently has there been any semblance of official recognition of the need for re-evaluating the traditional conception of business ethics and the legal status of consumer transactions in the light of modern circumstances.

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[1] Ernst Freund, Standards of American Legislation, Chicago, University of Chicago Press, 1965, p. 255

[2] Ibid., p. 84

Government's reluctance to reexamine the relationship between buyer and seller has tended to perpetuate a peculiarly one-sided arrangement in which the protections afforded by law are almost exclusively reserved for the person in the position of seller. Statutes authorizing debt collection, garnishment, deficiency judgments, and other measures designed to protect the seller from breach of contract are common. Yet laws which grant a like measure of protection for the consumer are noticeably lacking in most states.

In order to reduce the incidence of biased and narrowminded laws, Ernst Freund postulated the principle of correlation as one of his suggested standards of legislation. As he explained it,

> The correlation of distinct and separable provisions makes a system out of a conglomerate of rules, while the correlation of necessarily interdependent provisions is an imperative requirement of logic, the violation of which must nullify the offending statute in whole or in part.[3]
>
> Altogether the principle of correlation means the interdependence of right and obligation. Insofar as it is recognized it compels the legislator to examine a relation, * * * from the debit as well as the credit side, and it works against the assertion of absolute and unqualified right.[4]

In other words, the law is a double-edged sword, which can cut both ways. A law protecting the consumer may, at the same time, be a law which infringes on the rights of legitimate business. By the same token, a law which grants rights to business enterprises may harm the consumer by reducing his capacity to bargain on an equal basis in the marketplace. Simple justice demands that the responsibilities and privileges of both buyer and seller receive due consideration in the formulation of public policy affecting consumer transactions.

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[3] Ibid., p. 225

[4] Ibid., p. 248

While the objectives and perspectives of the seller and the purchaser normally differ, they find their common fulfillment and identity of interest in the transaction which occurs between them. Thus, to at least a limited extent, there is a mutuality of purpose in their meeting, a mutuality which finds its expression not in caveat emptor or caveat venditor, but in the fixation and performance of appropriate roles and expectations assigned to each participant. The violation of any of the established norms, which maintain the reciprocal benefits of the buyer-seller relationship, threatens the delicate balance of trust, which makes the system viable. Consequently, cognizance must be taken of the rights and obligations of both parties to a consumer transaction, and the potential effect of legislation bearing upon those rights and obligations, if inequity is to be avoided. Consumer protection is not an end in itself. It is one part of a package, which includes the protection of legitimate business interests as well. Like love and marriage, in fairness, "you can't have one without the other."

The ultimate objective should be less protection for either the consumer or the seller, and more, the restoration of integrity in the marketplace. Arbitrary, unreasonable and one-sided interference with liberty of contract or the conduct of ethical business is as much to be avoided as implicit legislative approval of harsh and unscrupulous business practices. Remedial legislation should strive, not merely to shift the balance of inconvenience from one party to another, but to secure for both parties those elemental components of a just commercial transaction.

## LEGISLATIVE RESPONSE TO CONSUMER PROTECTION DEMANDS

The legislature's response to consumer protection demands may take one or both of two forms:

1. Reactive and Specific. This response, which is, by far, the most common approach to regulation of the marketplace, places the emphasis on legislation which meets particular market abuses affecting the consumer. Legislation, from this perspective, is effected on a seriatim basis, with circumscribed laws relating to specific situations--e.g., hearing aid scandals, home improvement frauds, etc.

   One advantage of the reactive and specific response is that it isolates a particular problem area and provides a more immediate, easily identifiable and concrete method of regulation. At the same time, a consumer statute of narrow application avoids the danger of "overkill" (i.e., harming legitimate business as well as restricting unethical operations) while striking at real and tangible abuses; whereas a general statute must, of necessity, be somewhat vague and ambiguous. The reactive response also diminishes the likelihood of unnecessary, unenforcible and unimportant legislation.

   On the other hand, this approach focuses legislative attention on preexisting situations and attempts to provide corrective measures in an after-the-fact fashion. As a result of this perspective, the legislature reacts defensively to crises, tragedies and emergencies as they arise and, frequently, only after substantial damage has already been done to consumers and legitimate businesses. Since this response relies upon the demonstration of harmful consequences and existent evils for its impetus, it may come too late to rectify many injustices perpetrated prior to legislative action. In addition, this approach tends to permit abuses to go unchecked, which might otherwise be controlled under general statutes. With many areas of real or potential abuse uncovered by the law, marginal operators may be encouraged to circumvent the intent of existing consumer protection statutes by devising schemes and frauds as yet unregulated or prohibited. Further, the reactive approach may result in a chaotic statutory structure, with an incoherent patchwork of laws protecting the consumer on a hit-and-miss basis.

2. Anticipatory and Comprehensive. To prevent the unscrupulous businessman, medical practitioner or con man from fleecing the public, many observers have advocated general and broad-based consumer protection statutes as an alternative to reactive consumer legislation. According to those adhering to this position, the legislature has a responsibility to the consumer which extends beyond mere corrective reaction to preventive action. In their view, the legislature should strive to construct consumer protection statutes which anticipate potential hazards and abuses, without waiting for a situation to develop in which remedial action becomes an urgent necessity. Legislation should be considered in an atmosphere free from duress and should be framed in such a manner as to encompass a broad scope of evils. By adopting precautionary measures prior to need, when the need arises legal resources will be available to the consumer. Broadly worded statutes may be constantly reinterpreted to meet changing circumstances and new abuses as they occur. General consumer statutes reduce the need for specific statutes, which may be extended ad infinitum and provide for a more comprehensive and integrated body of law.

These advantages of anticipatory legislation, however, are somewhat offset by the possible shortcomings of general consumer statutes. Comprehensive legislation may have to be so loosely worded as to be innocuous and meaningless. While it may provide remedy for a specific abuse, the remedial authorization may be so abstruse and obscure as to render it invisible to the consumer seeking redress. Such legislation, susceptible as it is to interpretation, may subject both buyer and seller to endless litigation in the attempt to secure a definitive statement of intent. Where rights are in conflict and defenses are not clearly enunciated in law, the courts may find themselves swamped by consumer cases and appeals. Legitimate businessmen may be prevented from introducing new merchandising techniques or improved products through the fear of violating the vague terms of a general consumer statute. Thus, anticipatory and comprehensive legislation may have detrimental consequences for the growth of ethical business; it may bring about prolonged litigation; and it may serve as a weak and unenforcible palliative to consumers seeking laws to safeguard their interests.

Specific and comprehensive legislation are not necessarily mutually exclusive and antagonistic approaches to the problem of consumer protection. They may, in fact, be complimentary and mutually supportive when taken together as a systematic response to consumer demands for legislative action. In the regulation of the marketplace, there appears to be adequate room for both responses working in tandem for a common goal of restoring the balance between buyer and seller in a consumptive economy.

The subcommittee for study of consumer protection attempted to utilize both approaches in presenting its recommendations to the legislative commission for remedial legislation to protect Nevada's consumers. Its suggestions, together with model legislation where appropriate, are discussed in the pages to follow.

## UNSOLICITED MERCHANDISE SENT THROUGH THE MAILS

Mail advertising, however bothersome it may sometimes be, serves a legitimate purpose in the generation of sales. Particularly for a new firm, it may serve as a means of announcing to the consumer the availability of a product or service which could not be conveniently advertised through other channels. But like other legitimate trade practices, it is occasionally subjected to abuse from unethical segments of the business community. As Senator Warren Magnuson and Jean Carper pointed out in their book, _The Dark Side of the Marketplace_,

> A package containing vitamin capsules, stamps for albums, ties, books, arrives, and unless the receiver returns it or pays for it, he is bombarded with dunning letters, the last one threatening a lawsuit. Some swindlers scan the obituary columns of newspapers and address merchandise to the deceased. His survivors, thinking he ordered the goods, pay for it.[5]

Again,

> (Legislation) should be passed to end the nuisance of unsolicited merchandise received through the mail. Under contract law, as interpreted by United States postal authorities, a recipient of unsolicited merchandise can be held liable for payment--if he uses it, gives it away, sells it or otherwise appropriates it. If he lets it sit unopened on the shelf, he has not 'entered into a contract by virtue of acceptance,' and neither has to return nor pay for it. Many persons, however, do pay for the merchandise, believing they have an obligation to do so.[6]

At least five states have attacked this problem by enacting statutes which declare unsolicited merchandise sent through

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[5]Warren Magnuson, and Jean Carper, _The Dark Side of the Marketplace_, Englewood Cliffs, New Jersey, Prentice-Hall, Inc., p. 24.

[6]_Ibid._, p. 82.

the mails to be a free gift of the sender to the recipient. The Arkansas statute, enacted in 1969, closely parallels similar laws in California, Illinois, New York and Washington, in providing,

> Section 1. When unsolicited merchandise is delivered in this State to a person for whom it is intended, said person shall have a right to refuse to accept delivery of this merchandise, or may deem merchandise to be a gift and use it or dispose of it in any manner he chooses without obligation to the sender.[7]

A bill (A.B. 95) was introduced during the 1969 legislative session in Nevada, but it died in committee.

The subcommittee for study of consumer protection recommends the adoption of a statute permitting recipients of unsolicited merchandise sent through the mails to consider such articles the free gifts of senders. To clarify the intent of any such statute, four exceptions should be embodied in its language to cover the following situations where:

1. Delivery is made by mistake in response to an order for some other merchandise;

2. Delivery is made by mistake to someone other than the person ordering the merchandise;

3. Substitute merchandise is mailed in response to an order for other merchandise, as is the common situation in catalog sales' substitutions; and

4. Someone orders a gift for another and the merchandise is mailed directly to the recipient of the gift.

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[7]Research Department, Consumer Protection Laws, Research Report No. 142, Little Rock, Arkansas Legislative Council, October 15, 1969, p. 3.

## RECORD CLUBS AND BOOK CLUBS

There is a variation of the unsolicited merchandise problem that deserves separate discussion because it is a widespread trade practice among book clubs and record clubs--the "negative order." Today, an individual joining a record or book club is commonly offered two or three selections free or at a reduced price to entice him to membership. At the time he makes his free selections, he agrees to accept a specified number of other selections during the term of his membership. There is nothing wrong with such procedures. If anything, clubs making this type of offer are to be commended, for they may serve to raise the cultural level of our people through increased appreciation for fine music and literature. But too frequently the "member" is intimidated into buying more books or records than he can afford, or he relinquishes his freedom of choice in making his selections through the "negative order" device. It is the use of this device which disrupts the equilibrium in the buyer-seller relationship established when one joins a book or record "club."

The "negative order" is a well-known phenomenon. A book club (or record club, or yearbook manufacturer, etc.) using the device customarily mails each member a card announcing the coming month's selection, with the notation that "If we do not hear from you within ten days, this month's selection will be mailed to you and you will be billed upon receipt." For the busy man or woman, ten days often slip by without a response to such a "negative order" notice. Mail of this type is not commonly assigned a high priority in one's activity schedule, and may be easily forgotten. Hence, by omission rather than commission, the consumer may suddenly find himself the purchaser of something he did not want and did not order.

In the traditional marketplace, no response indicates no sale. The buyer must actively agree to purchase a commodity before a sale is transacted. However, under the "negative order" technique, usual business practice is reversed and no response is taken to be an affirmative response to a sales offer. The consumer must act, not to consummate a sale, but to negate it. He must expend time, effort and the cost of a stamp to prevent himself from being financially obligated to purchase something he may not want--and all within a deadline established by the seller. In effect, a petty tyranny controls the consumer in such situations, and the buyer forfeits his equal bargaining position vis-a-vis the seller. Were the "negative order" to become the universal norm in the commercial world, the buyer would be reduced to the station of a Pavlovian dog, responding to 10-day time limits in endlessly frustrating battles to preserve his financial resources from the depredations of aggressive businesses. He might even be forced to eliminate his annual vacation, for fear that if he went on a journey exceeding 10 days he would be reduced to bankruptcy induced by extravagant "negative orders" accumulating in his absence.

The subcommittee for study of consumer protection recommends the absolute prohibition of the "negative order" as a legitimate business practice in Nevada. Legislation on unordered merchandise might be expanded to encompass "negative orders" within the definition of unsolicited goods sent through the mails. The responsibility for making a sale properly rests with the seller. The role of the buyer should be that of one who agrees to buy something, not of one who disagrees and must act not to buy. The consumer should not be obligated in advance of agreement. A sale should remain a transaction requiring a conscious and deliberate acceptance of an offer extended by the seller on the part of the buyer.

## DOOR-TO-DOOR SOLICITATIONS

The traveling salesman in America is more than a source of jokes; he is an integral and important part of the economy, providing convenient at-home shopping for busy housewives, invalids, the handicapped and others of limited mobility in our society. At the same time, door-to-door soliciting provides employment for large numbers of men and women who might otherwise be unable to earn a living, e.g., students and disabled veterans and women whose domestic responsibilities limit their employment potential to part-time jobs.

Unfortunately, door-to-door sales have also afforded slick and unscrupulous gyp artists unique opportunities to victimize the poor, elderly and uneducated. Expensive "pennies-a-day" magazine subscriptions, home improvement schemes which lower the value of a home through shoddy workmanship, "free" placement of encyclopedias which cost "qualified" families hundreds of dollars in yearbook obligations, and a multitude of similarly deceptive practices abound in the door-to-door solicitation field, discrediting the honest efforts of ethical salesmen. Like vandals marauding the countryside, those malefactors who prey on the gullible and divorce them from their savings through deceit and cunning bring an honorable occupation into general disrepute.

Past difficulties with high-pressure sales tactics and swindles perpetrated by insincere door-to-door salesmen have appropriately led to licensing requirements and "Green River" ordinances in many localities. But experience has shown that solicitors who make their living by confounding the unsuspecting frequently ignore such requirements with impunity. Seldom are they challenged to present their credentials, and even less often are they reported to the police or prosecuted for failure to register or obtain a license. Hence, their numbers have been but little decreased by efforts to control their activities and to protect communities from invasion by traveling teams of bunco men posing as salesmen.

In Nevada, abuses of door-to-door solicitation are relatively common, despite legislative efforts to enable local units of government to cope with the problem. The provisions of NRS 650.020, requiring all traveling merchants to obtain a license from the county license board of the county in which they intend to transact business at a cost of $100 for each month or fraction thereof during which they will be operating in the county, seem sufficient to permit local areas to control hawkers and peddlers. Violation of the licensing requirement carries a misdemeanor penalty. Supplementing the general licensing requirement, NRS 269.170, 269.175 and 266.360 authorize unincorporated towns and incorporated cities to adopt additional licensing requirements for their immediate jurisdictions. It is difficult to see how the law could be improved in the area of licensing of door-to-door solicitors. Instead, the problem seems to lie in enforcement of existing statutes and ordinances. County and municipal licensing officials should not grant licenses on a pro forma basis, but should review each application on its merits. They should consider licensing as a regulatory function, rather than a source of revenue alone.

In addition to urging more vigorous enforcement of local licensing requirements for door-to-door solicitors, the subcommittee for study of consumer protection recommends the adoption of a three-day right of rescission on any contracts signed pursuant to a home solicitation or sale. As the authors of The Dark Side of the Marketplace state,

> A major trap for the consumer, especially in door-to-door sales, is the irrevocability of the signed contract. Once his signature is applied, the buyer is held responsible for the debt, even though he discovers in the next instant that he was victimized. This situation reflects again how our laws are weighted in favor of the seller. Some conditional sales contracts even specify that the seller can cancel for any reason if he discovers the customer is a poor credit risk, for example. But the consumer cannot exercise similar rights even though he finds the company to be thoroughly fraudulent.
>
> The malicious grip of unscrupulous door-to-door salesmen could be broken if the buyer, like the seller, were given a reasonable time * * * to reconsider his signed agreement and cancel it if he decided the purchase was unwise or deceptively induced * * *.
>
> Great Britain has had such a law since 1964, allowing a seventy-two hour cooling-off period, and Britain's Consumer Council reports that it has been a success, causing no demonstrable harm to salesmen who are open and above-board, and benefiting consumers. Washington, Illinois and Massachusetts have recently legislated cooling-off periods on door-to-door sales. Massachusetts reports that consumer response has been excellent and that some businessmen

> have even suggested lengthening the period of rescission from one day to three or more days. Many legitimate firms already permit cancellation of a contract within five days at the buyer's request * * *.
>
> Allowing rescission of a contract would hardly end shady door-to-door selling, for sometimes it is days, weeks, even months, before a buyer realizes he has been cheated. (Some never find out.) But a cooling-off period would put an end to the grim irreversibility of the signed contract and offer some relief from the high pressure and deceitful practices which some salesmen depend on to underwrite their shoddy businesses.[8]

Nevada residents already have a limited right of rescission under the recent federal legislation commonly known as the Consumer Credit Protection Act. Section 125 of Title I of this act (Public Law 90-321, approved on May 29, 1968) grants consumers the right to rescind any consumer credit contract involving their residential real property as a security interest within three business days from the date of consummation of the contract. A bill (A.B. 98) to extend the right of rescission to all contracts involving door-to-door solicitations was introduced at the last session of the Nevada legislature, but died in committee.

The subcommittee for study of consumer protection believes that the State of Nevada should act to expand the right of rescission now granted under P.L. 90-321 to all door-to-door credit contracts. It further suggests a three-day cooling-off period for the exercise of this right as the optimum time for allowing consumers to rescind on such contracts without unduly hampering legitimate businesses based on home solicitations.

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[8]Magnuson and Carper, op. cit., pp. 104-106.

SAMPLE RIGHT-OF-RESCISSION LAW (NEW YORK)*

## AN ACT

**To amend the personal property law, in relation to home solicitation sales**

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. The personal property law is hereby amended by adding thereto a new article, to be article nine-A, to read as follows:

### ARTICLE 9-A

#### HOME SOLICITATION SALES

*Section 350. Definition.*
*351. Buyer's right to cancel.*
*352. Form of agreement or offer; statement of buyer's rights.*
*353. Restoration of down payment; retention of cancellation fee.*
*354. Duty of buyer; no compensation for services prior to cancellation.*

§ *350. Definition. "Home solicitation sale" means a consumer credit sale of goods or services in which (a) the purchase price is payable in instalments; (b) the seller, his representative, or a person acting for him engages in a personal solicitation of the sale at a place other than a place of business of the seller; and (c) the buyer's agreement or offer to purchase is given to the seller, his representative, or a person acting for him at a place other than a place of business of the seller. It does not include a sale made pursuant to a preexisting revolving charge account, or a sale made pursuant to a preexisting agreement between the parties substantially consummated at a business establishment at a fixed location where goods or services are offered or exhibited for sale in the course of a business carried on by the seller at that establishment.*

§ *351. Buyer's right to cancel. 1. In addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third calendar day after the day on which the buyer signs an agreement or offer to purchase which complies with this party.*

*2. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.*

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* The subcommittee takes exception to §350 of the New York statute, believing that the definition of a home solicitation sale should not include sales made pursuant to preexisting revolving charges or sales made in connection with prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.

*3. Notice of cancellation, if given by mail, is given when it is deposited in a mail box properly addressed and postage prepaid.*

*4. Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.*

*§ 352. Form of agreement or offer; statement of buyer's rights. 1. In a home solicitation sale the seller must present to the buyer and obtain his signature to a written agreement or offer to purchase which designates as the date of the transaction the date on which the buyer actually signs and contains a statement of the buyer's rights which complies with subdivision two.*

*2. The statement must (a) appear under the conspicuous caption: "BUYER'S RIGHT TO CANCEL";*

*(b) contain the name and mailing address of the seller in place prescribed by paragraph (c);and*

*(c) say the following: "If you do not want the goods or services you may cancel this agreement by mailing a notice to the seller. The notice should say that you do not want the goods or services and should be mailed before midnight on the third day after you sign this agreement. The notice should be mailed to the following address (insert a mailing address of seller). If you cancel, the seller may keep up to fifteen dollars of your down payment."*

*3. Until the seller has complied with this section the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.*

*§ 353. Restoration of down payment; retention of cancellation fee. 1. Except as provided in this section, within ten days after a home solicitation sale has been cancelled or an offer to purchase revoked the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.*

*2. If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.*

*3. The seller may retain as a cancellation fee five per cent of the cash price but not exceeding fifteen dollars or the amount of the cash down payment, whichever is less. If the seller fails to comply with an obligation imposed by this section, or if the buyer avoids the sale on any ground independent of his right to cancel provided by the provisions of the buyer's right to cancel (subdivision one of section three hundred fifty-one), the seller is not entitled to retain a cancellation fee.*

*4. Until the seller has complied with the obligations imposed by this section the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods for any recovery to which he is entitled.*

*5. The amount of fifteen dollars in subdivision three hereof is subject to change pursuant to the provisions on adjustment of dollar amounts.*

*§ 354. Duty of buyer; no compensation for services prior to cancellation. 1. Except as provided by the provisions on retention of goods by the buyer, (subdivision four of section three hundred fifty-three), within a reasonable period after a home solicitation sale has been cancelled or an offer to purchase revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale but he is not obligated to tender at any place other than his own address. If the seller fails to demand possession of goods within a reasonable period after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, forty days is presumed to be a reasonable period.*

*2. The buyer has a duty to take reasonable care of the goods in his possession both prior to cancellation or revocation and during a reasonable period following. During a reasonable period after cancellation or revocation, except for the buyer's duty of care, the goods are at the seller's risk.*

*3. If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation except the cancellation fee provided in this part. If the seller's services result in the alteration of property of the buyer, the seller shall restore the property to substantially as good condition as it was at the time the services were rendered.*

§ 2. This act shall take effect September first, nineteen hundred sixty-eight.

## REGULATION OF CLOSING-OUT AND FIRE SALES

The subcommittee for study of consumer protection considered the problem of businesses advertising closing-out or fire sales to induce customers to purchase their merchandise, when, in fact, no closeouts were contemplated and no fires had occurred. While the seriousness of this problem is recognized, the subcommittee felt that specific legislation regulating such sales was unnecessary. NRS 207.170 prohibits false, deceptive and misleading advertising in language broad enough to encompass such unfair trade practices. The existing statute permits post facto prosecution for a misdemeanor where warranted, with the third and subsequent offenses being punishable as gross misdemeanors. It also authorizes the attorney general or district attorneys to seek restraining orders and injunctions, with violation of such orders or injunctions constituting gross misdemeanors.

In the belief that NRS 207.170 provides sufficient statutory protection for the consumer from misleading closing-out and fire sales, the subcommittee for study of consumer protection does not advocate the enactment of any specific legislative prohibition in this regard. It does, however, encourage the attorney general and local district attorneys to apply vigorously the statute where applicable.

## ODOMETER ROLLBACKS

In the Old West, a man's horse was one of his most valuable possessions. His steed had to be absolutely trustworthy, for it was, in fact, entrusted with the life of its rider. If one's horse lacked the necessary stamina, or was not surefooted, or panicked under pressure, trouble--and possibly disaster--was being courted. So the horseman exercised great care in the selection of his mount and prized a good horse almost as much as a good wife.

Today, the automobile has replaced the horse as the major mode of transportation, but the problem of trustworthiness remains critical. Nevadans must frequently travel great distances across barren desert, entrusting their lives to the mechanical quality of the vehicles they operate. Rough mountain roads require vehicles in top condition; so, too, do highways where high speed travel is the norm. If one's automobile lacks the necessary power, or functions improperly, or malfunctions at a crucial time or place, trouble--and possibly disaster--is being courted. So the automobile operator must exercise great care in the selection of his vehicle.

But for those Nevadans who cannot afford to buy new cars, or who desire to purchase an inexpensive second automobile, the selection of a trustworthy vehicle is risky business indeed. Unless one is a professional mechanic or has a mechanic assess the quality of an automobile being considered for purchase (always a good idea), the average consumer would be at a loss to know if a used car could meet the requirements placed on it by Nevada terrain. The typical buyer, seeking clues to potential performance, looks to certain visible signs of wear--a worn brake pedal, deteriorating interior and exterior condition of body, high mileage--for guidance in making his evaluation. But brake pedals can be replaced; bodies can be restored; and, too often, odometers can be rolled back to indicate less than the true mileage accumulated. Thus, for the less astute buyer, the visible reassurances he receives from his cursory inspection of a vehicle may mask invisible and potentially lethal defects in future performance capability.

In Nevada, the problem is not one of remote hypotheticals. Our state abuts the State of California, which has enacted legislation prohibiting odometer rollbacks (Veh. C. A. 28050 to 28052). Used cars in California which have high mileage can frequently be sold more profitably by transferring them to another state where odometer rollbacks are not specifically prohibited. By changing the odometer reading to a lower figure, a high-mileage vehicle can be sold more quickly and at a higher price than it could command if the true mileage was apparent to the prospective buyer. Under such conditions, the State of Nevada sometimes becomes a "dumping ground" for automobiles from California which have suffered excessive wear. Nevadans may be victimized by dealers seeking to maximize their profits through deceptive practices.

Therefore, the subcommittee for study of consumer protection recommends the adoption of legislation prohibiting odometer rollbacks in Nevada. It further suggests that Nevada model its odometer rollback law on the recently enacted New York statute requiring any person who sells or transfers a motor vehicle to list the vehicle's mileage on documents which are used in such sale or transfer. The New York law, according to Automotive News (September 29, 1969),

> * * * applies to both dealers and private parties * * *. It covers all types of sales and transfers except those of new vehicles by dealers.
>
> The mileage must be listed as it appears on the odometer. The law provides that if the owner knows that the mileage indicated on the odometer is less than the mileage driven, he should write, "True mileage unknown," in place of the odometer reading.
>
> If the odometer is altered or replaced for repair, a written notice of the mileage before the alteration or repair must be permanently attached to the vehicle's left front door frame.

The subcommittee believes that a law in Nevada similar to that enacted in New York would provide consumers with an effective means of combating a common deceptive practice in the used-car trade. Nevada should join the eight states already prohibiting odometer rollbacks and the 14 additional states currently considering antirollback legislation.[9]

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[9] States with odometer laws: California, Connecticut, Delaware, Kentucky, Massachusetts, New Jersey, New York, Wisconsin.

States considering odometer laws: Colorado, Florida, Illinois, Iowa, Maine, Maryland, Michigan, Ohio, Oklahoma, Oregon, Pennsylvania, Vermont, Virginia and Washington.

# NEW YORK ODOMETER LAW

## CHAPTER 958

**An Act to amend the general business law, in relation to using false statements or altering mileage registering devices.**

**Approved May 26, 1969, effective Oct. 1, 1969.**

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. The general business law is hereby amended by adding thereto a new section, to be section three hundred ninety-two-e, to read as follows:

§ 392–e. Using false statements or altering mileage registering devices

1. Upon the transfer of ownership of a motor vehicle, the seller shall enter on any instrument executed by him, including any form prescribed by the commissioner of motor vehicles, and on any other bill of sale, certificate, or evidence of title or condition given by him at the time of transfer or sale, the mileage said motor vehicle purports to have been operated as the same appears upon the odometer in such motor vehicle. In the event that such odometer mileage is known to the seller to be less than such motor vehicle has actually travelled, the seller shall enter upon any said transfer instrument or statement "True mileage unknown." In the event that it is known to the seller that the mileage indicated on such odometer is beyond its designed mechanical limits, he shall state the total cumulative mileage on the aforesaid prescribed transfer instruments. Any person, firm, partnership, or corporation who gives a false statement to a transferee under the provisions of this section, shall be guilty of a misdemeanor, provided, however, that no person, firm, partnership, or corporation shall be convicted under the section where a vehicle has been resold in reliance on the required statement of the prior owner and pursuant to the provisions of subdivision one, two, three and four of section three hundred ninety-two-e.

2. A person, firm, partnership, or corporation who shall misrepresent the mileage of a motor vehicle to a transferee by the execution and delivery of the written statement required in the preceding paragraph hereof and which in fact is false, or who shall misrepresent such mileage to a transferee by disconnection, changing, or causing to be disconnected or changed any mileage registering device on a motor vehicle so as to thereby indicate a lesser mileage than such motor vehicle has actually travelled, shall be guilty of a misdemeanor.

3. Nothing herein contained shall prevent the service, repair or replacement of a mileage registering device, provided the mileage indicated thereon remains the same as before the service, repair or replacement; or provided the mileage registering device reads zero and a notice in writing is attached to the left front door frame of the vehicle by the owner or his agent, indicating the mileage prior to replacement and the date on which it was replaced. Any unauthorized removal of such notice so affixed shall constitute a violation of subdivision two of section three hundred ninety-two-e.

4. This section shall not apply to new motor vehicles. A new motor vehicle is one sold or transferred by a manufacturer, distributor or dealer and which has not been placed in consumer use or has not been used as a demonstrator.

§ 2. This act shall take effect on the first day of October next succeeding the date on which it shall have become a law.

## REDEMPTION FOR CASH OF TRADING STAMPS

Trading stamps have become almost a way of life for many American consumers, who rely on them as a form of forced savings for the purchase of desired merchandise through "gift" redemption. But for others, trading stamps are seen as a nuisance and an unnecessary or unwanted cost factor added to the price of goods. Without prejudice to the proponents or opponents of trading stamps, the subcommittee for study of consumer protection believes that the consumer should be given the option of redeeming trading stamps for merchandise or for the cash-equivalent value of the stamps at trading stamp redemption centers.

A bill (A.B. 774) to permit the direct retailer discount in lieu of stamps on demand of the consumer was introduced during the 1969 session of the legislature, but died in committee. The subcommittee does not believe that the approach taken by A.B. 774 of the 1969 session achieves the desired result of increasing the range of choices open to the consumer without unduly penalizing the merchant offering trading stamps as a part of his promotion program. Local merchants would likely find it extremely difficult to compute and and record discount equivalents. Sales personnel and checkout girls would probably become confused, and customer lines would almost certainly be lengthened by the delays necessitated by the discount procedure recommended by the "in lieu" approach.

Nonetheless, the subcommittee believes that a customer should not be forced to pay for stamps he does not want. To insure this protection for the consumer with minimal disruption of normal business procedures, the subcommittee recommends the cash redemption method of broadening buyer rights vis-a-vis trading stamp advertising. This approach presents certain problems, which are not considered to be insurmountable. Charles K. Mark, Assistant Researcher for the University of Hawaii's Legislative Reference Bureau, discussed the issue of cash redemptions in Trading Stamp Legislation, Report No. 1, Legislative Reference Bureau, 1967. His caveats are well worth noting, in view of the subcommittee's recommendation in this area. According to Mark,

> Some trading stamps bear no indication of value on their face. A number of trading stamp companies print a monetary value, usually in terms of mills, on their stamps but still only redeem them in merchandise, while others permit optional cash or merchandise redemption. Where trading stamps are redeemable either in cash or trade, the option as to the manner of redemption rests with the company in the absence of a statute to the contrary. Nineteen states have statutes requiring optional cash redemption wherein the option

as to the manner of redemption is given to the stamp saver. There appears to be ample precedent then for requiring cash redemption in any consideration of trading stamp legislation.

With the exception of Indiana, the statutes of all states providing for cash redemption require that a cash value, as determined by the trading stamp company, be printed on each stamp in cents or any fraction thereof and that stamps be redeemed in cash upon presentation of a stipulated minimum amount at the option of the holder. The right to redeem small numbers of stamps is of some significance in the event of withdrawal or cessation of business by a trading stamp company.

Indiana's statute, enacted in 1913, requires that the redemption value must be the same in cash or merchandise. Evidence of litigation involving this requirement has not been uncovered.

Stamp companies have not vigorously opposed cash redemption requirements, at least not in the courts. They do, however, object to the requirement that the cash value printed on each stamp be equal to merchandise redemption value. Since cash redemption value typically is set below merchandise redemption value, this requirement would eliminate the profit normally obtained by the companies from the markup on merchandise from wholesale to retail value.

For example, a company issuing stamps to a retailer at a price of $3.00 per thousand might offer to redeem the same thousand stamps in merchandise worth $3.00. The company then purchases merchandise at a wholesale price of, say, $2.00 and offers it for redemption valued at its normal retail price of $3.00. The $1.00 markup provides their margin for operation and profit.

The company would appear to have no margin from which even to pay expenses if the stamps must also be valued at $3.00 in cash.

While technically trading stamp companies could revalue their merchandise redemption value downward to provide a ratio under which they could operate, the result of such a revaluation would of necessity substantially reduce the merchandise value made available to the stamp saver.

> Accordingly, there would be little or no inducement for the stamp saver to redeem his stamps in merchandise rather than cash. Thus, while such a requirement would not necessarily put trading stamp companies out of business, the ultimate effect probably would be to reduce the attractiveness of trading stamps to such a degree that many merchants might no longer be interested in using them.
>
> There is also a problem in determining the cash value which would be equivalent to merchandise redemption value. As in any retailing operation, merchandise is not marked up on a uniform, single percentage basis but according to the type of item offered. The large variety of items offered by trading stamp companies for redemption would make any such determination almost impossible, especially with changes from time to time in the quality, prices and variety of merchandise stocked.[10]

Trading stamps can serve as a useful advertising tool in certain instances. But, the subcommittee suggests, the consumer should not be required to purchase them in order to run his automobile or to eat. If he doesn't want them, he should be given the right to redeem them for cash at trading stamp redemption centers.

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[10] Charles K. Mark, Trading Stamp Legislation, Report No. 1, Honolulu, Legislative Reference Bureau, University of Hawaii, 1967, pp. 42-45.

## SERVICE STATION PRICE LISTS

Dissatisfaction with extreme variability in prices for common services by gas stations and auto service stations has led the subcommittee for study of consumer protection to recommend enactment of a statute requiring such businesses to post, in conspicuous places, price lists for normal services rendered on the premises. In the subcommittee's opinion, the consumer has a right to price information relating to such things as tire repairs, lubrications, battery charges and assorted services of a routine character. He should be able to compare prices readily, without the difficulty and embarrassment attendant upon personal inquiry, when the dollar stake involved is not sizeable. Customers are already provided with gasoline price information, and the subcommittee's suggestion is only an extension of the same principle to other areas encompassed within the routine operation of service station businesses.

Certain difficulties might be encountered in the definition of "common services" necessitating the posting of price data. However, the subcommittee believes that such services could be enumerated by law or defined by administrative regulation. At the present time, the state sealer of weights and measures in the department of agriculture is responsible for checking and inspecting all petroleum products measuring devices. If the "common services price list" recommendation is adopted, enforcement might appropriately come within the purview of the state sealer. If the definition of "common services" is left to administrative regulation, the state sealer could be given the requisite authority to adopt rules governing the posting of price information according to the intent of the act.

## SALES RAIN CHECKS

A common advertising technique of merchants is the well-known "sale" of selected items at a reduced price. Sale items, of course, are normally designed to entice customers into a store in the hopes that they will purchase other nonsale items as well. Frequently, the retailer receives little or no profit from the transactions involving sale items. Hence, the term "loss leader" is sometimes used to describe such merchandise.

A customer who enters a store to purchase a loss leader item or other sale merchandise naturally expects that advertised items are available for him to buy. In most reputable establishments, if the quantity of sale items is limited, the advertising so states, and the consumer is forewarned that the offer is made on a restricted or "first come, first serve" basis. He has no legitimate complaint if, through lack of diligence, he fails to obtain the merchandise because the supply has been depleted.

However, when a concern offers an item at a reduced price and indicates that the sale is to continue for several days, without advertising any restrictions on quantity, a customer would seem to have sufficient cause for irritation when he arrives on the first day of sale and is told that the stock of sale items has been sold out. To promote better business-customer relations, some grocery and retail stores give their clients "rain checks," which authorize later purchase of merchandise at the sale price. When the depleted stock is renewed, the consumer can still buy the item at the reduced rate by presenting his "rain check" for a discount on the regular price.

The subcommittee for study of consumer protection recommends that retail establishments advertising sale items, without specifying a limited quantity, be required to meet consumer demand for such items for the duration of the sale. If the available supply is exhausted, "rain checks" should be issued for later purchase of the item at the sale price, or like merchandise of equal or greater value substituted to meet demand at the price advertised for the original item.

## REFERRAL SELLING

One technique sometimes employed by less ethical salesmen engaged in direct solicitation is that commonly called "referral selling." In referral selling, a seller usually offers a prospective buyer a rebate or discount on the purchase price of the article being sold if he can "refer" other prospective buyers to the salesman. Senator Warren Magnuson and Jean Carper have explained how the scheme works,

> The gist of the swindle is that customers are led to believe that by referring the names of acquaintances as prospective customers, they will have to pay nothing for a piece of merchandise, and very often will make money. For each friend who is sold, or who agrees to participate in the "advertising campaign," as it is invariably called, the victim is promised a commission. Salesmen frequently erase customers' doubts by telling them that 80 percent of those referred actually "participate" as proved by past experience. In truth, postal inspectors, by painstakingly searching through company records, have discovered that only about 5 percent of the referred actually sign up. And of course once they have sold the original customer, some companies don't bother to follow up the leads supplied, or to remit the commission if a referred friend does buy. This deceit is all the more cruel for it is being practiced on elderly people who find the lure of making a few pennies to augment their meager income irresistible.[11]

In 1965, the Supreme Court of Washington declared referral selling a lottery, and hence illegal under that state's antilottery laws. The case, Sherwood & Roberts-Yakima, Inc. v. Leach, dealt with a particularly vicious fraud in which victims were obligated to pay $1,187.28 for fire alarm equipment costing $225.32. Buyers were promised credits of $100 for each referral resulting in a successful sale. The court, in its decision, pointed out the absurdity of the scheme,

> This means that twelve respondents' referrals must purchase as respondent did; they, in turn, to get something for nothing must find twelve more people to purchase and so forth, as follows:

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[11]Magnuson and Carper, op. cit., pp. 13-14

| | Number of Purchasers |
|---|---|
| | 1 |
| 1st round | 12 |
| 2nd round | 144 |
| 3rd round | 1,728 |
| 4th round | 20,736 |
| 5th round | 248,832 |

> Soon the scheme will run itself out; the market will become saturated.[12]

Indeed, by the ninth round the plan would require sales to over five billion people, more than all the people on earth.

The subcommittee for study of consumer protection sees absolutely no justification for permitting such a sales technique to be used in Nevada. To protect the citizens of this state from the unscrupulous practice of "referral selling," the subcommittee recommends the adoption of legislation prohibiting the practice and suggests that any bill on the subject be patterned after the 1969 act of the Minnesota legislature amending Minnesota Statutes 1967, Section 325.79.

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[12] Ibid., p. 74.

MINNESOTA REFERRAL SELLING LAW

Minnesota Statutes, 1969, Chapter 1100.

Subd. 2. [REFERRAL SELLING PROHIBITED.] With respect to any sale or lease the seller or lessor may not give or offer a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease. If a buyer or lessee is induced by a violation of this subdivision to enter into a sale or lease, the agreement is unenforceable and the buyer or lessee, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed without any obligation to pay for them.

## UNIFORM CONSUMER CREDIT ACT

The Uniform Consumer Credit Act (U3C) was drawn up by the National Conference of Commissioners on Uniform State Laws to permit states to gain exemption from the provisions of the Federal Consumer Credit Protection Act of 1968. According to Honorable Leonor K. Sullivan, Chairman of the U.S. House of Representatives' Subcommittee on Consumer Affairs of the Committee on Banking and Currency,

> The Federal act * * * provides machinery by which individual States can obtain special exemption from specific provisions of the Federal law if they have State laws on those specific points which are at least equal to the Federal law in the degree of protection accorded consumers, and if there is adequate provision for enforcement of those State laws. Furthermore, where the State law in one or more particulars exceeds the consumer protection standards of the Federal law, such as on garnishment to use one example, the stronger protections of both the Federal and State law apply within that State, as long as the two laws are not in conflict.[13]

As of August 1969, 29 states had the U3C under consideration in their legislatures. The Uniform Consumer Credit Code was introduced in the 1969 session of the Nevada Legislature as Senate Bill 170, but the measure died in committee. To date, only two of the 29 states reviewing the proposed legislation have enacted it--Oklahoma and Utah. On May 7, 1970, The Board of Governors of the Federal Reserve System ruled favorably on the application of Oklahoma for exemption from the Federal Consumer Credit Protection Act (Truth in Lending). Utah's application for exemption was pending at the time of the subcommittee's investigation.

Mrs. Sullivan has commented on the scope of the U3C,

> If adopted by any of the States, this code would supersede virtually all existing laws within that State on all aspects of consumer credit regulations, such as those designated as: Small loan acts, personal loan acts, consumer loan acts, and acts licensing personal

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[13] U. S. House of Representatives, 91st Cong., 1st Sess., Subcommittee on Consumer Affairs of the Committee on Banking and Currency, Hearings * * * on Consumer Credit Regulations, Pt. 1, February 25 and 26, 1969, Washington, Government Printing Office, 1969, p. 2.

> loan lenders, sales finance companies and consumer finance companies; installment loan laws; retail installment sales acts, motor vehicle installment sales acts, all goods acts; revolving sales credit acts; revolving loan acts; truth-in-lending acts; home solicitation sales and loan acts; home improvement sales and loan acts; insurance premium financing acts; and acts imposing maximum charges for credit and general usury acts. In addition, the proposed Code would affect all State laws on residential and farm real estate transactions involving mortgages.[14]

Under the U3C, the administrator (the official or agency designated by the legislature of the adopting state to enforce the code) has substantial powers for gaining compliance with the code's provisions. He can exercise investigatory powers, making periodic examinations of the business, loans, and records of all licensees (persons engaging in the business of making or taking assignments of supervised loans). He may issue a cease-and-desist order to any lender violating a provision of the U3C. He may also initiate the following civil actions:

1. Action to restrain any person from violating the U3C;
2. Action to restrain a creditor or his representative from making unconscionable agreements or engaging in unconscionable or fraudulent conduct;
3. Action to recover excess charges and associated civil penalties on behalf of one or more debtors; and
4. Action to recover civil penalties for willful violations of the U3C by a creditor or his representative.[15]

After reviewing the U3C's enforcement provisions, Barbara A. Curran has stated that

> * * * none of the aforementioned powers is mandatory. These powers can aid the well-financed and energetic Administrator in implementing the policies and purposes of the Code. For the passive or impecunious

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[14] _Ibid._, p. 1

[15] Barbara A. Curran, "Administration and Enforcement Under the Uniform Consumer Credit Code," _Law and Contemporary Problems_, Vol. 33, No. 4 (Autumn, 1968), p. 746

> Administrator, these provisions are little more than ink on paper. These statements characterize not only provisions relating to counseling, education, and research but may be said to apply to the administrative enforcement provisions of the UCCC generally. The drafters have created the potential for the Administrator's office to be a significant force in effecting the objectives and purposes of the Code, but they cannot guarantee that this potential will be realized in any state in which the UCCC is enacted.[16]

The administration of the U3C is basically self-financed. Lenders or persons or organizations taking assignments of consumer credit obligations are required to pay a minimum annual fee of $10, plus an additional sliding fee of $10 for each $100,000 (or part thereof in excess of $100,000) of the original unpaid balances arising from consumer credit sales, consumer leases and consumer loans made in the state in the preceding calendar year and held by the seller, lessor or lender for more than 30 days. Assignees need not pay fees with respect to obligations on which the assignor or other person has already paid a fee. Utah's code has amended this section of the U3C to permit a maximum annual registration fee of $50, while retaining the sliding scale features of the Uniform Consumer Credit Code.

According to testimony presented to the subcommittee for study of consumer protection, the revenues to be derived from the annual fees would be sufficient to implement the enforcement of the code without cost to the consumer or the State of Nevada. The burden of expense would rest primarily with the creditor.

The subcommittee for study of consumer protection noted the numerous admirable features of the proposed Uniform Consumer Credit Code--such as the granting of the right of rescission in home-solicitation sales--but also noted that many consumer groups throughout the county have expressed opposition to the code. The code has been denounced by the Consumer Federation of America, the Consumers League of New Jersey, CUNA International, Consumers Union and other consumer-oriented groups. A portion of their opposition stems from provisions in the code that transcend the scope of legislation necessary to gain exemption from the Federal Truth in Lending Act, with particular antagonism being engendered by the so-called "escalator clauses" in the code. These provisions would allow the maximum

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[16] Ibid., p. 751

interest rate permitted under the code (36 percent) to apply to greater amounts of the unpaid balance than the $300 maximum stated in the code if there are changes in the Consumer Price Index, taking December 1967 as the Reference Base Index. Appended to this section is an article from the March 1969 issue of Consumer Reports ("A Consumer Credit Code * * * for lenders"), which summarizes much of the criticism emanating from consumer organizations.

The code would substantially change existing Nevada statutory law in areas where change is unnecessary to comply with federal standards. It would place the burden (assuming exemption is obtained) for enforcing the code on the state, when this burden would otherwise be borne by the Federal Government under the truth in lending law. The code is extremely complex and would be difficult to administer. The subcommittee feels, if uniformity is desirable in the area of consumer credit transactions, that uniformity can best be achieved by allowing the Federal Government to administer and enforce the Truth in Lending Act of 1968.

Hence, the subcommittee does not recommend the enactment of the Uniform Consumer Credit Code. Instead, it suggests the amendment of the pertinent sections of Nevada Revised Statutes to bring them into line with the Federal Consumer Credit Protection Act and Regulation Z of the Board of Governors of the Federal Reserve System, which is the regulation interpreting and implementing the provisions of the federal act. A draft bill is appended to accomplish this purpose.

EXPLANATION OF DRAFT BILL (BDR 8-48)

This bill does not undertake to duplicate in full the disclosure provisions of the Consumer Credit Protection Act (which provisions standing alone are sometimes called the Truth in Lending Act), but it eliminates all conflicts, express or implied, between Nevada and federal disclosure requirements. It therefore simplifies the disclosures required of Nevada retailers and issuers of credit cards, but does not qualify Nevada for exemption from federal regulations governing retail credit.

There appears to be no conflict with respect to consumer loans.

SUMMARY--Conforms Nevada law on retail installment sales to Consumer Credit Protection Act. Fiscal Note: Effect less than $2,000. (BDR 8-48)

AN ACT relating to retail installment transactions; conforming Nevada law to applicable federal statutes and regulations; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 97.015 is hereby amended to read as follows:

97.015 As used in this chapter, the following terms have the meanings attributed to them in NRS [97.023 to 97.155,] 97.025 to 97.135, inclusive, and section 20 of this act unless the context otherwise requires.

Sec. 2. NRS 97.025 is hereby amended to read as follows:

97.025 "Cash [sale] price" means the price for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of a retail installment transaction, if the sale had been a sale for cash. The cash [sale] price may include any taxes, registration and license fees, and charges for transferring vehicle titles, delivery, installation, servicing, repairs, alterations or improvements.

Sec. 3. NRS 97.105 is hereby amended to read as follows:

97.105 "Retail installment contract" or "contract" means a contract, other than [a retail charge] an open end credit agreement or an instrument reflecting a sale made pursuant thereto, entered into or performed in this state for a retail installment transaction. The term "retail installment contract" includes a security agreement and a bailment contract or lease if the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of the value of the goods and if it is agreed that the bailee or lessee is bound to become or, without giving further substantial value, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease.

Sec. 4. NRS 97.115 is hereby amended to read as follows:

97.115 "Retail installment transaction" means any transaction in which a [retail] buyer purchases goods or services from a retail seller [pursuant to a retail installment contract or a retail charge agreement, as defined in this chapter, which provides for a time price differential and under which the buyer agrees to pay the time balance in one or more installments.] <u>, defers payment of all or part of the purchase price, and pays a finance charge.</u>

Sec. 5. NRS 97.125 is hereby amended to read as follows:

97.125 "Retail seller" or "seller" means:

1. A person engaged in the business of selling goods or services <u>;</u> [to retail buyers;] or

2. A business organization or financial institution which issues or otherwise distributes a credit card to be used in connection with [a retail charge] <u>an open end credit</u> agreement.

Sec. 6. NRS 97.165 is hereby amended to read as follows:

97.165 1. Every retail installment contract shall be contained in a single document which shall contain the entire agreement of the parties, including any promissory notes or other evidences of indebtedness between the parties relating to the transaction, except as provided in NRS 97.205 and 97.235, but:

(a) Where the buyer's obligation [to pay the time balance] is represented by a promissory note secured by a chattel mortgage or other security agreement, the promissory note may be a separate instrument if the mortgage or security agreement recites the amount and terms of payment of such note and the promissory note recites that it is secured by a mortgage or security agreement.

(b) In a transaction involving the repair, alteration or improvement upon or in connection with real property, the contract may be secured by a mortgage or deed of trust on the real property contained in a separate document. Home improvement retail sales transactions which are financed or insured by the Federal Housing Administration are not subject to the provisions of this chapter.

2. The contract shall be dated, signed by the retail buyer and completed as to all essential provisions, except as otherwise provided in NRS 97.205, 97.215 and 97.235. [The printed or typed portion of the contract, other than instructions for completion, shall be in a size equal to at least 8-point type.]

3. Where more than one document is executed by the parties, all the disclosures required by this chapter to be made by the retail seller to the buyer must be contained in:

(a) A single one of the executed documents, on the same side of the page and above or adjacent to the place for the buyer's signature; or

(b) A separate statement which identifies the transaction, all on one side.

Sec. 7. NRS 97.175 is hereby amended to read as follows:

97.175 [The retail seller shall deliver to the retail buyer, or mail to him at his address shown on the retail installment contract, a copy of the contract as accepted by the seller, prior to the due date of the first installment. Until]

1. Except as otherwise provided in NRS 97.205 and 97.235, the retail seller shall:

(a) Make all disclosures required by this chapter to the buyer in writing before the buyer becomes indebted to the seller for the goods; and

(b) Deliver to the buyer, or mail to him at his address shown on the retail installment contract, a copy of the contract as accepted by the seller, before the due date of the first installment.

2. Unless the seller does so the buyer shall be obligated to pay only the cash [sales] price. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least 10-point bold type and, if contained in the contract, shall appear directly above the buyer's signature.

Sec. 8. NRS 97.185 is hereby amended to read as follows:

97.185 1. The retail installment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer and a description or identification of the goods sold or to be sold, or services furnished or rendered or to be furnished or rendered. [The contract also shall contain the following items, which shall be set forth substantially in the sequence appearing below:

(a) The cash sale price of each item of goods or services.

(b) The amount of the buyer's down payment, identifying the amounts paid in money and allowed for goods traded in.

(c) The difference between paragraphs (a) and (b).

(d) The aggregate amount, if any, included for insurance, specifying the type or types of insurance and the terms of coverage.

(e) The aggregate amount of official fees.

(f) The initial balance, which is the sum of paragraphs (c), (d) and (e).

(g) The amount of the time price differential.

(h) The amount of the time balance owed by the buyer to the seller, which is the sum of paragraphs (f) and (g).

(i) The number of installments required to pay the time balance, the amount of each installment, and the date for payment of the installments. If the final payment substantially exceeds the other scheduled installments, it shall be set forth separately.

2. Additional items may be included in the contract to explain the calculations involved in determining the amount to be paid by the buyer.]

2. The contract also shall contain the following items, which shall be set forth substantially in the sequence appearing below:

(a) The cash price of each item of goods or services.

(b) The amount of the buyer's down payment, identifying:

(1) The amount paid in money as "cash down payment";

(2) The amount allowed for goods traded in as "trade-in"; and

(3) The sum as "total down payment."

(c) The unpaid balance of cash price, which is the difference between paragraphs (a) and (b).

(d) The aggregate amount, if any, included for insurance, specifying the type or types of insurance and the terms of coverage.

(e) The aggregate amount of official fees.

(f) The unpaid balance, which is the sum of paragraphs (c), (d) and (e).

(g) The amount of the finance charge.

(h) The total of payments owed by the buyer to the seller, which is the sum of paragraphs (f) and (g).

(i) The number of installments required to be paid, the amount of each installment, and the date for payment of the installments. If the final payment is more than twice the other scheduled installments, it shall be set forth separately, identified as a "balloon payment," and accompanied by a statement of the conditions, if any, under which it may be refinanced if not paid when due.

3. The contract shall also set forth:

(a) The deferred payment price, which is the sum of paragraphs (a), (d), (e) and (g) of subsection 2.

(b) The finance charge expressed as an "annual percentage rate" unless the finance charge:

(1) Does not exceed $5 and applies to an initial unpaid balance of $75 or less; or

(2) Does not exceed $7.50 and applies to an initial unpaid balance of more than $75.

(c) The date on which the finance charge begins to accrue if different from the date of the transaction.

4. Additional items may be included in the contract to explain the calculations involved in determining the amount to be paid by buyer or to provide other disclosures required by law.

Sec. 9. NRS 97.195 is hereby amended to read as follows:

97.195 The amount of the [time price differential] finance charge in any retail installment contract shall not exceed 1 percent of the [initial] original unpaid balance multiplied by the number of months, including any excess fraction of a month as 1 month, elapsing between the date of such contract and the due date of the last installment, or $25, whichever is greater. In addition, such contract may provide for:

1. A delinquency charge on any installment delinquent 10 days or more in the amount of 5 percent of such installment or $2, whichever is greater, but not to exceed the sum of $5.

2. Reasonable collection costs and attorney's fee in the event of delinquency.

Sec. 10. NRS 97.205 is hereby amended to read as follows:

97.205 [1. Retail installment contracts negotiated and entered into by mail or telephone without solicitation in the personal presence of the buyer and based upon a catalog of the seller, or other printed solicitation of business may be made as provided in this section. Such contracts when completed by the buyer need not contain the items required by NRS 97.185.

2. If such catalog or other printed solicitation clearly sets forth the cash sale prices and other terms of sales to be made through such medium, when the contract is received from the retail buyer, the seller shall prepare a written memorandum containing all of the information required by NRS 97.185 to be included in a retail installment contract. In lieu of delivering a copy of the contract to the retail buyer as provided in NRS 97.175, the seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment payable under the contract.

3. If the catalog or other printed solicitation does not set forth all of the other terms of sales in addition to the cash prices, such memorandum shall be delivered to the buyer prior to or at the time of delivery of the goods or services.] Where a retail installment contract is made by mail or telephone without solicitation in

the personal presence of the buyer, is not subject to rescission pursuant to section 24 of this act, and is based upon a catalog of the seller or other printed solicitation of business, the disclosures required by this chapter may be made to the buyer at any time before:

1. The due date of the first installment, if the cash price, down payment, finance charge, deferred payment price, annual percentage rate, and the number, frequency and amount of payments are set forth in or determinable from the catalog or printed solicitation.

2. The first delivery of goods or performance of services under the contract, if the information required by subsection 1 is not so available.

Sec. 11. NRS 97.235 is hereby amended to read as follows:

97.235 1. [In the event subsequent retail installment purchases are made by a buyer from a seller, such subsequent retail installment purchases may, by agreement of the parties, be consolidated with a prior retail installment contract.] Subsequent retail installment purchases may by written agreement of the buyer and seller be consolidated with a prior retail installment contract if:

(a) The agreement discloses the applicable annual percentage rate or rates and provides the method of treating any unearned finance charge on an existing balance in computing the new finance charge or charges; and

(b) The creditor retains no security interest in any goods for which he has received payments aggregrating the amount of the sale price, including any finance charge attributable thereto.

2. The [time price differential] finance charge for such consolidated contract shall not [, however,] exceed the aggregate of the [time price differential] finance charge for:

(a) The original contract and any extension thereof by virtue of such consolidation; and

(b) The subsequent installment purchase or purchases.

[2.] 3. In the event of such consolidation, in lieu of the buyer's executing a retail installment contract respecting each subsequent purchase, it shall be sufficient if the seller prepares a written memorandum of each such subsequent purchase, in which case the provisions of NRS 97.165, 97.175 and 97.185 shall not be applicable. Unless previously furnished in writing to the buyer by the seller, by sales slip, memorandum or otherwise, such memorandum shall set forth with respect to each subsequent purchase the items set forth in paragraphs (a) to (f), inclusive, of subsection [1] 2 of NRS 97.-185, and in addition:

(a) The unpaid balance of the previous contract or contracts;

(b) The consolidated unpaid balance;

(c) The amount of the [time price differential;] finance charge;

(d) The consolidated [time balance;] total of payments; and

(e) The revised installments applicable to the consolidated [time balance,] total of payments, if any, in accordance with NRS 97.185.

The seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment of such consolidated contract.

[3.] 4. When a subsequent purchase is made, the entire amount of all payments made previous thereto shall be applied toward the payment of the previous time sale price or time sale prices. [Each] If no security interest is created or retained in previously purchased goods, each payment thereafter received shall be allocated to all of the various time sale prices in the same ratio as the original cash sale prices of the various purchases bear to one another [. However,] , but the amount of any initial or down payment on the subsequent purchase shall be allocated in its entirety to such purchase. If a security interest is created or retained in previously purchased goods, each payment thereafter received shall be allocated to the first purchased of the goods so encumbered until it is paid for, and so on until all security interests are extinguished. If two or more items were purchased on the same date, payment shall be allocated first to the lowest priced.

[4.] 5. A retail installment contract may be contained in more than one document, if one such document is an original document signed by the retail buyer, stated to be applicable to purchases of goods or services to be made by the retail buyer from time to time. In such case such document, together with the sales slip, account book or other written statement relating to each purchase shall set forth all of the information required by NRS 97.185 and shall constitute the retail installment contract for each purchase. On each succeeding purchase pursuant to such original document, the sales slip, account book or other written statement may at the option of the seller constitute the memorandum required by this section.

Sec. 12. NRS 97.245 is hereby amended to read as follows:

97.245 [1. At or prior to the time a retail charge agreement is made the seller shall advise the buyer in writing, on the application form or otherwise, or orally, that a time price differential will be computed on the outstanding balance for each month (which need not be a calendar month) or other regular period agreed upon, the schedule or rate by which the time price differential will be computed, and that the buyer may at any time pay his total unpaid balance. If such information is given orally, the seller shall, upon approval of the buyer's credit, deliver to the buyer or mail to him at his address a memorandum setting forth such information.

2. The seller or holder of a retail charge agreement shall promptly supply the buyer with a statement as of the end of each monthly period (which need not be a calendar month) or other regular period agreed upon, in which there is any unpaid balance thereunder, which statement shall set forth the following:

(a) The unpaid balance under the retail charge agreement at the beginning and at the end of the period;

(b) Unless otherwise furnished by the seller to the buyer by sales slip, memorandum or otherwise, a description or identification of the goods or services purchased during the period, the cash sale price and the date of each purchase;

(c) The payments made by the buyer to the seller and any other credits to the buyer during the period;

(d) The amount, if any, of any time price differential for such period; and

(e) A legend to the effect that the buyer may at any time pay his total unpaid balance.

3. A retail charge agreement may provide for a time price differential not to exceed a rate of 1.8 percent per month on the deferred balance.]

1. Before the first transaction is made under any open end credit agreement, the retail seller shall disclose to the buyer in a single written statement, which the buyer may retain, in terminology consistent with the requirements of subsection 2, each of the following items to the extent applicable:

(a) The conditions under which a finance charge may be imposed, including an explanation of the time period, if any, within which any credit extended may be paid without incurring a finance charge.

(b) The method of determining the balance upon which a finance charge may be imposed.

(c) The method of determining the amount of the finance charge, including the method of determining any minimum, fixed, transaction or similar charge, which may be imposed as a finance charge.

(d) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(e) The conditions under which any other charges may be imposed, and the method by which they will be determined.

(f) The conditions under which the seller may retain or acquire any security interest in any property to secure the payment of any credit extended under the agreement, and a description or identification of the type of the interest or interests which may be so retained or acquired.

(g) The minimum periodic payment required.

2. Except in the case of an account which the seller deems to be uncollectable or with respect to which delinquency collection procedures have been instituted, the seller shall mail or deliver to the buyer, for each billing cycle at the end of which there is an outstanding debit balance in excess of $1 in that account or with respect to which a finance charge is imposed, a statement or statements which the buyer may retain, setting forth each of the following items to the extent applicable:

(a) The outstanding balance in the account at the beginning of the billing cycle, using the term "previous balance."

(b) The amount and date of each extension of credit or the date such extension of credit is debited to the account during the billing cycle and, unless previously furnished, a brief identification of any goods or services purchased.

(c) The amounts credited to the account during the billing cycle for payments, using the term "payments," and for other credits including returns, rebates of finance charges, and adjustments, using the term "credits," and unless previously furnished, a brief identification of each of the items included in such other credits.

(d) The amount of any finance charge, using the term "finance charge," debited to the account during the billing cycle, itemized and identified to show the amounts, if any, due to the application of periodic rates and the amount of any other charge included in the finance charge, such as a minimum, fixed, transaction or similar charge, using appropriate descriptive terminology.

(e) Each periodic rate, using the term "periodic rate" (or "rates"), that may be used to compute the finance charge, whether or not applied during the billing cycle, and the range of balances to which it is applicable.

(f) The annual percentage rate or rates, using the term "annual percentage rate" (or "rates"), and, where there is more than one rate, the amount of the balance to which each rate is applicable.

(g) The balance on which the finance charge was computed, and a statement of how that balance was determined. If any balance is determined without first deducting all credits during the billing cycle, that fact and the amount of such credits shall also be disclosed.

(h) The closing date of the billing cycle and the outstanding balance in the account on that date, using the term "new balance," accompanied by the statement of the date by which, or the period, if any, within which, payment must be made to avoid additional finance charges.

3. The finance charge on an open end credit account shall not exceed a rate of 1.8 percent per month on the deferred balance.

Sec. 13. NRS 97.255 is hereby amended to read as follows:

97.255 The [time price differential] finance charge shall be inclusive of all charges incident to investigating and making the retail installment contract or [charge] open end credit agreement and for the privilege of making the installment payments thereunder and no other fee, expense or charge whatsoever shall be taken, received, reserved or contracted therefor.

Sec. 14. NRS 97.265 is hereby amended to read as follows:

97.265 If the cost of any insurance is included in the retail installment contract or [retail charge] open end credit agreement:

1. The contract or agreement shall state the nature, purpose, term and amount of such insurance, and in connection with the sale of a motor vehicle, the contract shall state that the insurance coverage ordered under the terms of this contract does not include "bodily injury liability," "public liability," and "property damage liability" coverage, where such coverage is in fact not included.

2. The contract or agreement shall state whether the insurance is to be procured by the buyer or the seller.

3. The amount included for such insurance shall not exceed the premiums chargeable in accordance with the rate fixed for such insurance by the insurer, except where the amount is less than $1.

4. If the insurance is to be procured by the seller or holder, he shall, within 45 days after delivery of the goods or furnishing of the services under the contract, deliver, mail or cause to be mailed to the buyer, at his address as specified in the contract, a notice thereof or a copy of the policy or policies of insurance or a certificate or certificates of the insurance so procured.

5. If any goods included in the down payment are insured, and the insurance policy or rights thereunder are assigned to the seller, the amount realized on such assignment shall be refunded to the buyer or credited on the next payment due under the contract or agreement.

6. If the contract or agreement requires the buyer to procure and furnish insurance acceptable to the seller and the buyer fails so to provide or such insurance as procured by the buyer is canceled or expires, the seller may procure such insurance in such form as the seller may deem necessary, and the cost thereof together with a [time price differential] finance charge may be added to the [unpaid time balance.] total of payments.

Sec. 15. NRS 97.275 is hereby amended to read as follows:

97.275 1. No provision of a retail installment contract or [retail charge] open end credit agreement shall be valid by which the buyer agrees not to assert against the seller or against an assignee a claim or defense arising out of the sale.

2. No act or agreement of the retail buyer before or at the time of the making of a retail installment contract, [retail charge] open end credit agreement or purchases thereunder shall constitute a valid waiver of any of the provisions of this chapter or of any remedies granted to the buyer by law.

Sec. 16. NRS 97.285 is hereby amended to read as follows:

97.285 The limitation imposed upon [time price differentials] finance charges by this chapter is exclusive, and neither the provisions of NRS 99.050 nor any other law limiting rates of interest applies to contracts or agreements governed by this chapter.

Sec. 17. NRS 97.295 is hereby amended to read as follows:

97.295 The provisions of this chapter [shall] do not invalidate or make unlawful retail installment contracts [or retail charge agreements executed prior to July 1, 1965.] , retail charge agreements or open end credit agreements executed prior to July 1, 1965, or the effective date of the relevant amendment.

Sec. 18. NRS 97.305 is hereby amended to read as follows:

97.305 Any seller who enters into any contract or agreement which does not comply with the provisions of this chapter or who violates any provision of this chapter except as a result of an accidental or bona fide error is barred from the recovery of any [time price differential,] finance charge, official fees, or any delinquency or collection charge under or in connection with the related retail installment contract or purchased under [a retail charge] an open end credit agreement; but the seller may nevertheless recover from the buyer an amount equal to the cash price of the goods or services and the cost to the seller of any insurance included in the transaction.

Sec. 19. Chapter 97 of NRS is hereby amended by adding thereto the provisions set forth as sections 20 to 24, inclusive, of this act.

Sec. 20. "Open end credit" means credit extended on an account pursuant to a plan under which:

1. A retail seller may permit the buyer to make purchases, from time to time, directly from the seller or indirectly by use of a credit card or other device, as the plan may provide;

2. The buyer has the privilege of paying the balance in full or in installments; and

3. A finance charge may be computed by the retail seller from time to time on an outstanding unpaid balance.

Sec. 21. Where a retail seller with respect to an open end credit account imposes finance charges with respect to specific transactions during the billing cycle, such charges shall be combined with all other finance charges imposed during the billing cycle, and the annual percentage rate to be disclosed shall be determined by:

1. Dividing the sum of all of the finance charges imposed during the billing cycle by the sum of the balances to which the periodic rates apply (or by the average of daily balances if a daily periodic rate is used), plus the sum of the amounts financed to which the specific transaction charges apply; and

2. Multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

Sec. 22. An annual percentage rate required to be disclosed pursuant to this chapter:

1. Shall be accurate within one-fourth of 1 percent; and

2. May be computed by any method permitted for the type of transaction by the Consumer Credit Protection Act (15 U.S.C. §§ 1601 et seq.) or a regulation issued under the authority of that act.

Sec. 23. The printed or typed portion of every retail installment contract, open end credit agreement, or separate statement of required disclosures shall be in a size equal to at least 8-point type, except that:

1. Instructions for completion may be printed in smaller type;

2. Where the terms "finance charge" and "annual percentage rate" are required to be used, they shall be printed more conspicuously than other terms required by this chapter; and

3. All numerical amounts and percentages shall be in a size equal to at least 10-point type or legibly handwritten.

Sec. 24. 1. In the case of any retail installment transaction by virtue of which a security interest is acquired or increased in any real property which is used or expected to be used as the principal residence of the buyer, the buyer is entitled to rescind the transaction at any time before midnight of the third business date following the date on which:

(a) The buyer becomes indebted to the retail seller for the goods or services purchased; or

(b) The disclosures required by this chapter are made,

flush whichever is later.

2. The right of rescission may be exercised by notifying the retail seller by mail, telegram or other writing. Notice becomes effective, as the case maybe, when:

(a) The letter is mailed;

(b) The telegram is filed for transmission; or

(c) Other written notice is delivered to the seller's designated place of business.

3. The retail seller shall inform the buyer of his right of rescission.

4. When a buyer exercises his right of rescission under this section, he is not liable for any finance or other charge, and any security interest becomes void upon such a rescission. Within 10 days after receipt of a notice of rescission, the retail seller shall return to the buyer any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the seller has delivered any property to the buyer, the buyer may retain possession of it. Upon the performance of the seller's obligations under this section, the buyer shall tender the property to the seller, except that if return of the property in kind would be impracticable or inequitable, the buyer shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the buyer, at the option of the buyer. If the seller does not take possession of the property within 10 days after the tender by the buyer, ownership of the property vests in the buyer without obligation on his part to pay for it.

5. A buyer may modify or waive his right to rescind a transaction subject to the provisions of this section if:

(a) The extension of credit is needed in order to meet a bona fide immediate personal financial emergency of the buyer;

(b) The buyer has determined that a delay of 3 business days in performance of the seller's obligation under the transaction will jeopardize the welfare, health or safety of natural persons or endanger property which the buyer owns or for which he is responsible; and

(c) The buyer furnishes the seller with a separate dated and signed personal statement describing the situation requiring immediate remedy and modifying or waiving his right of rescission. The use of printed forms for this purpose is prohibited.

Sec. 25. NRS 97.023, 97.045, 97.075, 97.085, 97.095, 97.145 and 97.155 are hereby repealed.

# A Consumer Credit Code ...for lenders

*The reform of archaic state credit laws is long overdue. But a new uniform credit code being presented to state legislatures offers precious little in the way of relief for borrowers. Indeed, it looks more like a handout to those who sell debt.*

The casual buy-now-pay-later tone of the American marketplace touches the lives not only of those who habitually use credit but also of those who cling tenaciously to old-fashioned cash buying. Lately, everyone has suffered the inflationary effects of what may well be an overdose of consumer credit. Despite such anti-inflationary strategems as a 10 per cent increase in income-tax withholdings, and despite the highest interest rates in history, installment credit contracts continue to finance vast amounts of buying. In the second half of 1968, consumers were plunging deeper into debt at the unprecedented rate of $800 million to $900 million per month.

Besides contributing to inflation, easy credit and its fellow-traveler, harsh collection methods, have lately fanned the fires of discontent in the city slums. During the 1967 riots in the black ghetto of Boston's Roxbury district, a furniture store was one of the first businesses put to the torch. According to officials of the National Association for the Advancement of Colored People, the store's exorbitant credit charges were "one of the causes of the riot and burning." The trade paper *Home Furnishings Daily* warned its readers that Negro resentment against unfair merchandising practices might spark similar riots in other cities. The paper was right. The U.S. Riot Commission Report of 1968, recounting the causes of disorders, said its investigators heard grievances of Negro consumers against unfair commercial practices in 11 of 20 cities studied.

Much has been said of the way consumer credit accelerates economic growth and provides the material comforts of an affluent society. Less is said of the hardships it has caused. Overcommitments to credit merchants burden uncounted families in every income bracket. By the mid-1960s—20 years into the post-World War II consumer credit boom—one family out of two was paying off installment debts, not counting home mortgages; one family out of four had committed one-third of its income to such debt payments, and one family out of 10 had committed 40 per cent or more of its income. In the first eight years of the present decade, personal bankruptcies nearly doubled. In those eight years, one million consumers, under unbearable pressure from creditors, went broke.

## Action and reaction

Excessive credit commitments and overreaching by credit sellers and collectors must be dealt with as a serious national problem. On that point all responsible observers, including those in the credit industry, can and do agree. The problems are indeed being dealt with this year at the national and state levels.

Leading the way is a magnificent piece of legal reform, the Federal Consumer Credit Protection Act. Beginning July 1, its Truth-in-Lending provisions will require all lending institutions and credit merchants to give consumers the facts they need in order to shop intelligently for credit (see page 386 of the 1969 Buying Guide Issue.)

With passage of the Consumer Credit Protection Act, Congress for the first time established some nationwide peacetime rules of behavior for lenders and some rights for borrowers. Beyond its demands for full disclosure, the act sets an upper limit on the percentage of a wage earner's paycheck that a creditor may seize through garnishment proceedings. For the first time, too, a Federal law gives you three days to change your mind about going through with a credit contract that takes your residence as security.

Thus, Congress has entered what previously was a private preserve of the state legislatures. Contracts between borrowers and lenders have traditionally been governed by business laws at the state level. Those laws were meant to cover relationships between businessmen, who can hold up their ends of a bargain. The same credit laws have come to govern "bargaining" between consumers and lenders. But that's usually no bargaining at all—only a take-it-or-leave-it deal based on a contract drawn up by the creditor's lawyers in terms and with implications that borrowers can only dimly grasp.

An elaborate web of hundreds of state retail installment sales laws and consumer loan laws has been spun during this century, ostensibly to right the balance. However, creditors themselves designed the web, and consumers are the flies. A generation born after World War II and now forming families and households will be signing loan forms and credit sale papers by the millions in the next several years. They sorely need the protection of a more realistic set of laws—laws that may have to be imposed by Federal rather than state government. The Consumer Credit Protection Act opens the door in that direction.

## Industry's wedge

Ironically, the credit industry has discovered in that new Federal law an excuse for pressuring state legislatures to pass in great haste the industry's latest version of a reform law. It seems that many existing state credit laws will need amending to avoid conflicts with the Federal law. Added legislative incentive comes from a states-rights section of the Federal law; it says that states that pass their own Truth-in-Lending laws may obtain exemptions from the Federal one.

The credit industry's new reform law is called the Uniform Consumer Credit Code (UCCC). The code was promulgated at the annual meeting last year of the National Conference of Commissioners on Uniform State Laws, a nongovernment organization closely related to the American Bar Association. Seldom in the checkered annals of state legislation has so complicated a bill been offered in the name of consumer protection.

The 127-page statute was drafted with the help of a panel of distinguished university professors of law, economics and sociology working with funds supplied mainly by the credit industry. Consumers are presumably expected to support enactment of the UCCC in the belief that it was written in their interest. As a UCCC committee staff member wrote in the *Harvard Business Review:*

> Most segments of the industry appreciate the advantages of uniformity and of outlawing undesirable credit practices that are used by a minority but reflect unfavorably on the majority. Responsible consumer groups similarly recognize that the code provides a much better balance between debtors' and creditors' rights than exists in current statutes.

It is true that some responsible consumer spokesmen have, despite misgivings, endorsed the UCCC, among them the White House consumer agencies of former President Johnson. But CU and its legal consultants can find little to cheer about. *We don't think any state, no matter how bad its existing credit laws, should adopt the UCCC without extensive amendments in favor of consumers.*

The UCCC's benefits to the credit industry are plain enough:

It opens the door to anyone who wants to go into the money-lending business. No license would be required unless interest rates charged were higher than 18 per cent, and no limit would be placed on the number of above-18 per cent lenders. Retailers could sell on credit, as they do now, at high legal interest rates without need of a license—and thus without fear of losing it for misbehavior.

It standardizes credit forms. Big loan companies and store chains would be able to replace scores of different credit applications, contracts and disclosure forms with one standard form. Standardization would make life simpler for consumers, too, if the contracts and forms were fair and easy to understand. But, as we will show, they could be quite unfair.

It offers an escape from Federal enforcement of the Truth-in-Lending Act. The UCCC was designed to qualify states for exemption. From the credit industry viewpoint, most state administrators are easier to live with than those in Washington. From the consumer's-eye view, state regulation of such related industries as banking and insurance is generally inadequate.

## Raising the roof on interest

But the part of the UCCC best calculated to appeal to lenders is its maximum interest rates. They would exceed top rates now in effect in such industrial states as New York, Illinois and California, where credit selling abounds. Under the UCCC, maximum installment rates would be set at 36 per cent per year on the first $300, 21 per cent on the portion of a debt from $300 to $1000, and 15 per cent on any portion above that.

The UCCC would also open the way for big boosts in interest on revolving charge accounts. The usual maximums now are 18 per cent (1½ per cent per month) on the first $500 and 12 per cent (1 per cent per month) on anything above that. The new ceilings would be 24 per cent and 18 per cent on store charge accounts and 36 per cent on bank credit cards and check-credit plans. And as is now the case, interest could be charged on the balance due at the *beginning* of the billing period—before your payments and returns were deducted.

Illustrations of the extra finance charges people might have to pay in states adopting the UCCC appear in the table on the facing page. The figures are based on data supplied by a government credit official in Massachusetts, and the comparisons are made with that state's present maximum rates, which are typical of those in industrial states. Note the possible increase in the cost of a one-year

## TAKING THE LID OFF INTEREST COSTS

As if maximum finance charges under present state laws weren't high enough, the Uniform Consumer Credit Code (UCCC) would frequently raise them considerably higher. Here are some comparisons between maximum charges and rates allowed in Massachusetts and the amounts consumers might pay if Massachusetts enacted the Code. Maximum rates in Massachusetts are typical of those in populous states. Credit life insurance and other charges could add significantly to the figures shown.

EXAMPLE: *$1000 of credit, plus interest, repaid in 12 equal monthly installments*

| CREDIT PLAN | MAXIMUM ANNUAL INTEREST RATE | | MAXIMUM FINANCE CHARGE | | INCREASE UNDER UCCC |
|---|---|---|---|---|---|
| | Massachusetts | UCCC | Massachusetts | UCCC | |
| Licensed small loan | 25.5% | 28% | $143 | $158 | $15 (11%) |
| Loan to pay insurance premium | 25.5 | 28 | 143 | 158 | 15 (11) |
| Unlicensed small loan | 12 | 18 | 66 | 100 | 34 (51) |
| Second mortgage[1] | 18 | 28 | 100 | 158 | 58 (58) |
| Appliances, installment purchase[2] | 16 | 28 | 90 | 158 | 68 (75) |
| New car, installment purchase[3] | 14.5 | 28 | 80 | 158 | 78 (97) |

[1] *For comparison only, since the smallest second mortgage loan permitted in Massachusetts is $1500.*

[2] *Or any other goods and services except a car.*

[3] *Of the examples shown here, new car credit is the only one in which prevailing rates usually are lower than the maximum.*

installment loan or purchase involving $1000 of initial credit. It could cost you $15 more than it does now at a licensed loan company and as much as $78 more at a new-car salesroom. Although new-car dealers might seldom avail themselves of the top rate, other lenders probably would, according to the state official.

That prediction is supported by some findings about what happened to interest rates early in 1967, when Massachusetts became the first state to require disclosure of true annual interest rates on consumer credit. All stores and credit institutions had to switch over to new contract forms and rate tables. A survey published by the Federal Reserve Bank of Boston reported that "The tendency for the maximum to become the norm was reinforced by the use of the new annual rate tables. These are prepared by commercial publishers and most orders were for maximum rate schedules, except for auto dealer financing."

You may well ask why the Uniform Consumer Credit Code seeks to raise maximum rates. To make credit easier to get? Hardly. As already noted, installment debt has been expanding at a record pace under the present rate ceilings.

The Truth-in-Lending Act, by requiring disclosure of the true annual interest rate, has the potential for sharpening price competition among lenders and credit retailers. If that happens, there may in theory be no need for rate ceilings at all. There was strong sentiment in that direction among the UCCC authors. They finally decided that it would be politically unwise to remove all ceilings.

But it will take some time for consumers to learn how to shop for credit since, after all, they have never before had the chance to learn. The competitive fruits of Truth-in-Lending will not ripen overnight. For many consumers, no amount of Truth-in-Lending would bring down credit costs. They are the poor, the uneducated, students, newly married couples and borrowers who are already overcommitted. It is an axiom that people who need credit the most are likely to pay the most for it.

Not only do the poor pay more for money, they are also caught in the net of neighborhood credit monopolies. To tighten a lucrative hold on their customers, many stores and loan companies refuse to trade information with credit bureaus. Consequently, many low-income consumers who have never missed a payment to the local furniture store or loan shop nevertheless cannot get credit elsewhere.

Raising the interest-rate ceilings may therefore be something less than satisfactory from either a political or an economic standpoint. One who thinks so is George Brunn, a municipal court judge in Berkeley, Calif., and a CU board member. He wrote to the UCCC sponsors: "To give persons a right to charge 36%-plus interest* (or finance charge) shocks at least my conscience and I do not believe that I am unduly sensitive."

## Who takes what risk?

The credit industry takes the position that the interest rates it must charge are determined, not by good conscience and morality, but by the degree of risk to which a lender's money is exposed. People with uncertain employment, low income or nonexistent credit records are poorer-than-average risks. A maximum rate of 36 per cent interest, so the argument goes, is necessary for the sake of consumers who might otherwise not be able to get credit anywhere except from loan sharks.

Merchants and lenders who choose not to exchange information with credit bureaus do not fit very well that image of a prudent taker-of-risks who judiciously weighs each borrower's worthiness. But the image is distorted anyway. That web of state laws previously mentioned, and not the lender's good judgments, is what secures many credit risks. The law in almost all states takes the plain and moral view that debtors must pay, and it backs its brand of morality with the authority of constables and courts.

Most consumer credit contracts do not result from a meeting of minds between equally well informed parties. Armies

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*The "plus" in the judge's remark refers to the fact that in some cases the UCCC ceilings would permit up to 39 per cent interest. Tacked onto that would be credit life insurance premiums and possibly a few ill-defined credit fees.

of door-to-door salesmen, car dealers and retailers are truly merchants of debt. Their goods and services are bait for the credit hook. Their sales pitch is tailored to lull the customer into total unawareness of the obligations that will flow with the ink in his signature. The special committee that drew up the Uniform Consumer Credit Code wondered, at the start of its task, whether the legal remedies given to creditors in the age before widespread consumer credit were quite fair now that "buying on time is becoming the norm and the consumer credit transaction is casual and commonplace." Judging by the results of their work, they never quite made up their mind.

The UCCC does deprive creditors of two utterly inequitable tricks of their trade. First, it outlaws confessions of judgment. A confession of judgment is a contract clause, legally acceptable in most states, in which a debtor, in effect, pleads guilty in advance to nonpayment. It's a handy item for the creditor to have when he wants a court to declare a debtor in default or to repossess collateral. Further, he can use the court's machinery to collect without giving the debtor his day in court. Second, the UCCC bans wage assignments, in which debtor assigns to lender the right to take his wages without a court order for garnishment.

The UCCC leaves the rest of the creditor's collection methods largely intact. Three case studies taken from recent Senate hearings on credit practices in the District of Columbia illustrate some abusive practices and how they are treated in the code.

## Holder-in-due-course

A woman responded to a radio commercial for a 10-day-free-trial offer on a television set. When a salesman came with the set, he said she would have to pay $25 "tax" and sign a "delivery receipt." She paid and signed. The price of the set was said to be $195, but in less than 10 days a finance company sent a book of 24 monthly payment slips totaling $330. The TV set broke down after one year. The woman, finding that she had already paid $190 and suspecting the set was second-hand, stopped making payments. A court summons followed. The woman requested a hearing. She was never called to court, but some months later the finance company garnisheed her wages. As a consequence, her employer said she would probably be fired.

Though misled by a commercial and gulled by a salesman, the woman had no right, under the law, to stop paying. She was a victim of the holder-in-due-course doctrine. Finance companies and banks make a business of buying negotiable sales contracts. Unless you can prove that they had reason to know a contract was fraudulently obtained, holders-in-due-course are viewed by the law as innocent parties entitled to be paid. Courts do not ordinarily question the validity of credit contracts. They routinely process thousands of default judgments and garnishments each day under the holder-in-due-course doctrine.

The UCCC should have banished the holder-in-due-course doctrine from all consumer credit transactions. Indeed, it appears at first reading to do that, but CU's legal consultants say the banishment is a sham. and the doctrine would live on virtually unimpaired. For one thing, it is banned only in sales contracts. not in consumer loans; the seller may get around the ban simply enough by wearing two hats, a salesman's and a loan company's: and stores would be free to open their own loan departments. Secondly, the finance companies that bought installment contracts would be able to force payment even though the law said such contracts were not negotiable. You'd have to take up your case against the store or sales firm. and the UCCC does little to encourage attorneys to represent you. In fact, it gives the consumer no right to sue. only to defend himself against a suit for default judgment. And his only reward for a successful defense would be a release from any further payments; he would get no refund.

Finally, the UCCC gives state legislatures the option of preserving the equivalent of holder-in-due-course doctrine for credit sales, provided the consumer doesn't raise a complaint with the finance company within three months.

In short, under UCCC the woman swindled on her television set purchase would very likely have been in the same predicament. And she was probably a victim of other bad credit practices as well.

For instance. her employer received a court order for wage garnishment even though she never had her day in court. In some states. debt collectors can obtain a garnishment without first winning a judgment against the debtor. The UCCC would stop that. theoretically. But in reality most judgments are handed down automatically. because the debtor fails to appear in court. One reason many people fail to appear is that the process server threw away the court notice instead of delivering it. That's called "sewer service." and it is a serious problem in New York City and elsewhere. The UCCC makes no attempt to protect consumers from sewer service.

Many times, too, people who do receive notice to appear in court fail to show up because they would lose a day's wages. The UCCC could have helped them by authorizing judges to award damages for such losses. But it does not.

A truly enlightened consumer credit code would banish wage garnishment altogether. Instead. the UCCC sets about the same garnishment limit as will go into effect on July 1, 1970, under the Consumer Credit Protection Act—25 per cent of a debtor's take-home pay. Several state laws with 10 or 15 per cent limits would be weakened by passage of the UCCC in its present form, as would Texas and Pennsylvania laws prohibiting garnishments entirely.

Garnishments often lead to loss of jobs and thence to personal bankruptcy. Creditors as well as debtors are hurt by the sequence. Under UCCC, therefore, the woman with the television set could not legally be fired for receiving a wage garnishment. The trouble is, many employers resent the extra payroll expenses of processing wage garnishments. They can find other reasons for firing. The only cure is to outlaw all consumer credit garnishments.

## The repossessed

In a second case study of overreaching credit practices, an elderly woman had paid $35 a month for three years—more than $1200—on a bed, a chair and a television set. With a fairly large balance still due, she begged the store to reduce the size of her payments because of a family financial emergency. The store was unsympathetic and warned her that it would repossess everything if she didn't keep making full payments. As good as its word, the store several times sent men for the furniture; but when the woman saw the truck outside she refused to open her door. One day, seeing no truck, she answered a knock on her door. A man burst in and braced the door open for his helper. Together, they hauled away the bed, the chair and the TV. A neighborhood legal assistance worker later found the woman sleeping on the floor. Meantime, the store continued billing her for the unpaid balance on the furniture it had repossessed.

Forced entry for purposes of repossessing goods on grounds of default is an everyday occurrence. State laws against it have so far proved futile. The authors of the UCCC have made no attempt to deal with the problem directly. At most, a state consumer credit administrator might be able to issue a cease-and-desist order against firms that repeatedly seized goods against the wishes of the debtor. Even that remedy is not spelled out, however.

Aside from the strong-arm stuff used against the old woman, the furniture company resorted to a nasty kind of "add-on" contract. In such a contract, payments are assigned proportionally to several items financed, and none is considered paid for until all are. The UCCC would put an end to that trick by requiring assignment of payments to one thing at a time. (Congress, rather than the code authors, deserve thanks for that rule; it is derived from the Truth-in-Lending Act.)

But can a creditor take back his goods and still demand payment of the balance due? Under present laws, he is supposed to sell the repossessed goods first and credit the amount realized to the balance due. In most states, he may then get a deficiency judgment for the rest, plus expenses of repossession and sale. Unscrupulous businesses have been able to milk that process for rich profits, as in the case of the following racket, described in the 1968 annual report of the Consumer Frauds Unit of the U.S. Attorney for the Southern District of New York:

> Investigations have disclosed a pattern of sales of certain used cars at many times their original cost, followed by a cycle of repossession, repurchase of the car at a low price at auction and further resale at many times that price to new customers. . . . The inquiry indicated that in certain cases some used car dealers know in advance that there will be a complaint regarding each and every automobile sold and that many customers will give up the car and default because they feel it cannot be made to work.

Under UCCC, sellers of cars or anything else priced over $1000 could continue to repossess and also get deficiency judgments. They would have to be satisfied with repossession alone on less expensive goods. But they would be allowed to keep all the proceeds of resale, even if, as was very likely true in the old woman's case, resale brought in more than the balance due. A fair credit law would, in our judgment, give creditors the alternatives of either repossession or a court judgment against a defaulting debtor, but not both. Such a law would insist further on a fair and open sale of any repossessed goods: it would give the defaulted debtor a refund if the repossessed goods sold for more than the unpaid balance due on them.

## Sources of further information

Leaders of consumer groups, public-interest lawyers and private citizens wishing to speak out on the Uniform Consumer Credit Code when it comes before their state legislatures will need much more detailed information than can be fitted into one magazine article.

A useful package of source materials and articles pro and con, called "A Critique of the Uniform Consumer Credit Code," has been made available. It consists of 300 pages of consumer-oriented commentary, plus copies of the UCCC; the Federal Consumer Credit Protection Act, including the Truth-in-Lending Act and its regulations; "Legislative Controls as a Response to Consumer-Credit Problems," by Barbara Curran, a noted student of state credit laws; and, in limited numbers, the March 1968 issue of the *Columbia Law Review*, 132 pages of which were devoted to the UCCC. The package is being offered for $15 by the Consumer Research Foundation, Box 9034, Berkeley, Calif. 94709.

Also available in at least limited quantities is a close analysis of the UCCC prepared by the Consumer Affairs Advisory Council of New York City. Write to the Department of Consumer Affairs of the City of New York, 80 Lafayette St., New York, N.Y. 10013.

For copies of the UCCC itself and a summary booklet write to its sponsor, the National Conference of Commissioners on Uniform State Laws, 1155 East 60th Street Chicago, Ill. 60637.

Meanwhile, a task force of lawyers is preparing a critique under sponsorship of the Consumer Federation of America; furthermore, a thoroughly amended and consumer-oriented version of the UCCC (by Professor William F. Willier of the Boston College Law School) has been prepared for the Massachusetts Consumers' Council but has not yet been published. When and if those and other items become available, information on how to obtain them will be published in CONSUMER REPORTS.

## Land grabbing

The last case history is that of a home owner and his troubles with one of those home-improvement salesmen whose practice is to follow, buzzard-like, on the heels of city building inspectors. The victim, who owned his house for 20 years, fell for the salesman's line and signed up for $3000 worth of repairs. He signed a number of mysterious papers, one of which was a deed of trust putting up his property as security. Later, a bank sent him a payment schedule totaling $5250.

Finally realizing his mistake, he decided not to go through with the deal. But although no work was ever done on his house. the bank threatened to foreclose. Furthermore, the home owner learned that a neighbor had lost her house under similar circumstances. He therefore borrowed $400 to make up back payments. He wound up paying more than $100 a month for nothing.

No one knows how many houses have been lost to the home-improvement racket, with its redoubtable sellers of aluminum siding, patios, water softeners, furnaces, central vacuum-cleaning systems, intercoms and anything else attachable to a house.

The number is certainly large. For according to the executive vice president of a finance company specializing in home improvement "paper," his firm usually has an inventory of about 300 houses throughout the country as a result of quitclaims and foreclosures. He estimated a foreclosure rate of 1 to 2 per cent.

The UCCC would perpetuate the whole reprehensible process. It specifically sanctions taking real estate as security for home-improvement debts of $1000 or more.

## Missing: the right philosophy

In far more ways than can be recited here (see box on page 125). the Uniform Consumer Credit Code seems dedicated to perpetuating current unhealthy practices. The influence of the credit industry comes through in section after section.

Missing, in letter and spirit, is a proper legislative regard for economic incentives. If deprived of most of the forces of law now operating for him. the lender would truly have to rely on his prudent judgment. And the borrower would have to protect his reputation as a reliable risk. The proposition was well stated a few years ago by some experts on consumer credit:

> More and more in our modern society credit is essential for the wage earner to obtain his share of goods and services. Credit grantors, relying on credit information, can refuse credit to debtors who have not paid their debts. The emergence of electronic data processing equipment makes it even more likely that in the future rather complete information will be available to an inquiring credit grantor. The . . . debtor's fear of getting a bad

credit rating may be one of the strongest collection remedies the creditor has—far surpassing his ability to deduct a few dollars from his debtor's paycheck. . . . A lack of self-restraint, coupled with aggressive selling by credit grantors . . . has led many to buy more than they can afford. . . . It may be that one answer is to force creditors to exercise self-restraint in the granting of credit.

Those words come not from outsiders—they come from a staff memorandum to the drafters of the Uniform Consumer Credit Code. As long ago as 1965. the code-drafting committee reported, "Our present thinking is that harsh collection laws may result in damage not only to debtors but also to the consumer credit industry and to society as a whole."

Perhaps if those same men were allowed to return to their task, unhindered this time by pressure from the credit industry, they would draft a law in harmony with their own thinking.

It might prove a very good law indeed.

## CONSUMER AFFAIRS DIVISION IN ATTORNEY GENERAL'S OFFICE

A growing trend among the states is the designation of some public official to act as the spokesman for the consumer at the governmental level. In some states, this duty is performed by a consumer counsel (as in California) or a department of consumer protection (Connecticut). In other states, consumer representation is the duty of a consumers' council (Florida, Massachusetts, Michigan). But, by far, the most frequent method of assuring the consumer of some governmental advocate at the state level is the designation of an official or a bureau within the office of the attorney general to handle consumer fraud matters and related buyer problems.

A study by Patricia K. Putman [Consumer Protection by Government Action in Response to Senate Resolution No. 136, Hawaii State Legislature, 1967 General Session, Legislative Reference Bureau, University of Hawaii, Request No. B-4691, pp. 15-19 (March 1968)] summarized the status of consumer protection agencies in the various states at that time. Her survey follows:

### California

California's Office of Consumer Counsel was established by the legislature in 1959. The Counsel is authorized to: (1) advise the governor on matters affecting consumers; (2) recommend to the governor and the legislature legislation to protect and promote the interests of consumers; (3) study consumer problems and report on them to the people; (4) appear before governmental commissions, agencies, and departments to represent consumers' interests; and (5) cooperate and contract with public and private agencies to obtain necessary information and services...

### Connecticut

Connecticut created a Department of Consumer Protection by statute in 1959. The scope of the Department's services is indicated by the titles of its seven divisions: Food, Unfair Sales Practices, Drug, Pharmacy, Weights and Measures, Athletic, and Consumer Frauds.

### Florida

The Florida Consumers Council was created by statute in 1967. The Commissioner of Agriculture is chairman of the twenty-member Council which is authorized to study and make recommendations on consumer protection laws, report violations, develop educational programs, hold conferences, and recommend programs to encourage business to maintain high standards. The Florida legislature also established an Office of Consumer Services in the Department of Agriculture.

Massachusetts

The Massachusetts legislature established a Consumers' Council in 1963. The thirteen-member Council is authorized to conduct studies, investigations, and research; advise the executive and legislative branches in matters affecting consumer interests; coordinate consumers' services carried on by departments and agencies; further consumer education; appear on behalf of consumer interests before federal and state committees and before commission or department hearings; and inform the public on policies, decisions, and legislation affecting consumers...

Michigan

The 1966 Michigan legislature established a Consumers' Council, effective April 1, 1967. The Council consists of three separate three-member committees with respective committee responsibility for formulating and directing programs to protect individual consumers from harmful products and merchandise, false advertising, and deceptive sales practices.

New Hampshire

In October, 1966, the Governor appointed a Consumer Council.

New Jersey

The Office of Consumer Protection in the New Jersey Department of Law and Public Safety was established March 30, 1967. Its functions are to: (1) receive consumer complaints and forward them to appropriate state agencies; (2) advise the Governor and the Attorney General on matters affecting the interests of consumers; (3) review state policies and programs of primary interest to consumers and identify unmet consumer needs which can be appropriately met through state action; (4) consider aspects of state policies, programs, and operations wherein the views of consumers should be made available to state officials and the manner in which such views can be communicated to appropriate departments and agencies; (5) recommend legislation to protect and promote the interests of consumers; (6) appear before government departments, agencies, and commissions to represent consumer interests; (7) cooperate with and establish liaison with consumer organizations; and (8) assist in the coordination of federal, state, and municipal activities relating to consumer affairs.

Rhode Island

In 1966 the Rhode Island legislature, overriding their Governor's veto, established a seven-member Consumers Council. The Council's functions include study of problems affecting consumer interests, recommendation of legislation on consumer matters, and appearance in behalf of consumers at government hearings.

Consumer Fraud Bureaus

Twenty-three states have some form of consumer fraud or protection agency, functioning for the most part in the offices of the attorney general. The exact makeup of these agencies and the functions assigned to them vary from state to state, but generally they are authorized to protect the consumer through mediation, education, legislation, and litigation.

States with consumer fraud or protection units are:

| | | |
|---|---|---|
| Alaska | Kansas | New Jersey |
| Arizona | Maine | New Mexico |
| California | Maryland | New York |
| Connecticut | Massachusetts | North Dakota |
| Florida | Michigan | Ohio |
| Hawaii | Minnesota | Pennsylvania |
| Illinois | Missouri | Vermont |
| Iowa | | Washington |

Since the Putman report was issued, the New York legislature has created a department of consumer affairs in the executive department and Governor Ronald Reagan has advocated the creation of a separate consumer agency in California.

In Nevada, many existing consumer protection statutes address themselves to the attorney general or district attorneys for enforcement. To date, enforcement has been erratic and, in some instances, nonexistent. For example, NRS 207.170 declares false, deceptive and misleading advertising unlawful. This prohibition applies to advertising disseminated by mail, telephone or door-to-door contacts, as well as newspaper advertising. Upon conviction violators are deemed guilty of a misdemeanor for their first and second offenses and a gross misdemeanor for their third and all subsequent offenses. The attorney general or the district attorneys are authorized to bring an action in district court to restrain or prevent any false or deceptive advertising. Persons violating any court order or injunction are guilty of gross misdemeanors. However, in practice, Nevada's false advertising statute is practically a dead letter. The workload on the district attorneys and the attorney general's office is simply too great to permit active enforcement of such a statute. There are too many other, more pressing, concerns making demands on these officials.

Enforcement does not have to be removed from the attorney general or district attorneys to be effective, despite the fact that the subcommittee found that past enforcement has not been effective when located in their offices. The subcommittee for study of consumer protection believes that the attorney general should be given additional staff specifically for the task of enforcing consumer protection statutes.

Since an effective consumer advocate should be knowledgeable in business practices and procedures, the subcommittee suggests that a consumer affairs division in the attorney general's office be created and that the division be headed by a retired or former businessman rather than an attorney. The chief of the division and an assistant would act as inspectors, performing necessary investigations on behalf of the attorney general and advising him on any necessary legal action to gain compliance with Nevada's consumer protection laws.

The subcommittee felt that a single special deputy attorney general for consumer affairs would be inadequate to the task of investigating consumer problems statewide, that he would likely have insufficient background in business matters, and that his salary would be too costly to be commensurate with the benefits to be derived for consumers.

Two inspectors with business experience in place of a single attorney could be provided at the same cost to the state with broader coverage and enhanced protection for the buying public.

If a consumer affairs division is set up in the attorney general's office along the lines suggested here, additional investigators could eventually be hired on a part-time basis under a work study program with the University of Nevada at Reno and Las Vegas, the areas of heaviest population. Under this program, a student could work 15 hours a week at $2 per hour. The state would pay 20 percent of the salary and the Federal Government would pay the other 80 percent as work study. This plan provides a low cost work force, gives work to interested and deserving students and trains persons who are interested in entering government service.

The State of Maryland is currently operating a consumer's protection agency using seven student helpers. These students work a 40-hour week during summer vacations at a total cost per week to the state of $112 for salaries. During the school year, they work 15 hours per week. After a brief training program, the students can be assigned to such duties as investigations, receiving and processing complaints and participation in consumer education. By having the student helpers go into the field to receive complaints, persons of low income and members of disavantaged groups will not feel inhibited about going to a government office to file a complaint. The student helpers could set up schedules to use space in local schools on a regular basis (once a month) to receive complaints.

The potential contributions of a consumer affairs division in the attorney general's office to a more effective program of enforcement of existing and proposed consumer protection laws are considerable. The designation of two consumer protection inspectors in the attorney general's office would avoid the present problem of confusion of responsibility and would insure highly visible representation for the consumer at the state level. Hopefully, enforcement could then become a matter of performance rather than promise.

## CONSUMER EDUCATION

An intelligent buyer is an informed buyer, one who understands the workings of the marketplace and can recognize honest salesmanship, good quality in merchandise and a fair and competitive price. Ultimately, the best protection available to the consumer is his own awareness. Hence, the subcommittee for study of consumer protection strongly recommends that consideration be given to consumer education programs in elementary and secondary schools in Nevada.

Certain consumer-oriented programs--notably home economics and auto repair courses--are common in Nevada's high schools. In fact, some schools have begun experimental programs that go beyond traditional home economics classes to explore new vistas in consumer education. Wells High School, for example, is currently offering a boys' food class as part of its elective curriculum. This course emphasizes how to purchase foods, so that the future "breadwinners" will be better prepared to meet the demands placed on their paychecks from this important budgetary item. The school also offers a consumer education unit within its family living class.[17]

But, while selected schools are pursuing innovative approaches to consumer education, by and large our educational system has not stressed the significance of this aspect of the schools' total program of preparing our young people for later life in an adult role. Most young people leave our schools ill-prepared to deal with the problems of insurance, credit, budgeting and other aspects of family finance.

The lack of consumer education as a part of most elementary and secondary curricula is not unique to Nevada. It is a problem common to most state educational systems. To remedy the situation, some states have explored the concept of mandatory consumer courses for all high school students. Illinois enacted such a statute in 1968.

Nevada already requires conservation education in its school system, and the mandatory approach might seem a logical extension of the concept into the consumer area. But the subcommittee for study of consumer protection does not believe that consumer education should be frozen into the curriculum of any school by law. If our educational system is to grow with the times, if it is to meet new demands placed on it in the future, it must retain the flexibility to adapt to changing circumstances.

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17"Boys at Wells High School Prepare for Consumer Roles," Nevada Vocational Reflector, V. 51, No. 4, May 15, 1969, p. 4

Consequently, the subcommittee encourages Nevada schools to integrate a program of consumer education into their existing framework of courses. All students should be exposed to the relevant information necessary to prepare them for their future roles as consumers through emphasis on consumer problems in regular classes. For example, Robert E. Goodman has pointed out that "elementary math classes could quite appropriately include calculations of budgets and English classes could study the deceptive use of emotive words."[18]

Consumer education needs to be stressed more than it has been in the past. At the same time, caution should be exercised so that our schools are not unduly hampered in planning their programs by unnecessary legislative restrictions on curriculum content.

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[18] Robert E. Goodman, "An Act to Prohibit Unfair and Deceptive Trade Practices," Harvard Journal on Legislation, Vol. 7, No. 1, (November 1969), p. 127

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