CODE COMMISSION NOTES

2nd Sent. re order to cease, deleted as covered by § 24607.

CROSS REFERENCES

Penalty for violation, see § 24651.

ADMINISTRATIVE CODE REFERENCES

Advertising, rules and regulations, see 10 Cal. Adm. Code 1467–1476.

§ 24411. *Statement of rates of charge.* The commissioner may require that rates of charge, if stated by a licensee, be stated fully and clearly in such manner as the commissioner deems necessary to prevent misunderstanding by prospective borrowers. (Stats. 1951, c. 364, p. 1150, § 24411.)
Derivation: Stats. 1939, c. 1045, p. 2891, § 15.

§ 24412. *Advertisement of rates and cost of loans.* If any person engaged in the business regulated by this division refers in any advertising to rates of interest, charges, or cost of loans, the commissioner shall require that they are stated fully and clearly in such manner as he deems necessary to give adequate information to prospective borrowers. If the rates or costs advertised do not apply to loans of all classes made or negotiated by such person, this fact shall be clearly indicated in the advertisement. (Stats. 1951, c. 364, p. 1150, § 24412.)
Derivation: Stats. 1939, c. 1045, p. 2891, § 15.

§ 24413. *Use of disapproved advertising copy.* No advertising copy shall be used for its use has been disapproved by the commissioner and the licensee is notified in writing of such disapproval. (Stats. 1951, c. 364, p. 1151, § 24413.)
Derivation: Stats. 1939, c. 1045, p. 2891, § 15.

CROSS REFERENCES

Penalty for violation, see § 24651.

§ 24414. *File of advertising copy.* The commissioner may require licensees to maintain a file of all advertising copy for a period of 90 days from the date of its use. This file shall be available to the commissioner upon request. (Stats. 1951, c. 364, p. 1151, § 24414.)
Derivation: Stats. 1939, c. 1045, p. 2891, § 15.

ARTICLE 2

LOAN REGULATIONS

Sec.
22450. Charge without loan.
22451. Maximum interest rate.
22452. Charges for service and expense; maximum aggregate amount of charges and interest.
22453. Insurance of property securing loan; maximum aggregate charge.
22454. Charges in excess of maximum.
24455. Statutory fees.
24456. Computation of charges and interest; payment in equal installments.
24457. Advance payment and compounding of charges and interest.
24458. Enforcement of out-of-state loans.
24459. Collection of out-of-state loans.
24460. Contracting or negotiating for out-of-state loans.
24461. Schedule of charges; display; approval.
24462. Charge in excess of maximum.
24463. Splitting loan.

* * * * * * *

annum and also denying a licensee the right to contract for or receive service or expense charges beyond actual outlay and limiting the aggregate amount of such interest and charges to 2½ per cent. per month on loans of less than $100 and 2 per cent. on any remainder of an unpaid balance of principal in excess of that amount, is not invalid on ground that it discriminates between lenders charging

different rates of interest on theory that the maximum limitation on the aggregate amounts which could be charged borrowers did not take into consideration variations in interest charges. Id.

The Small Loan Act which prohibits an interest charge of more than 10 per cent. per annum and also denies a licensee the right to contract for or receive service or expense charges beyond the actual outlay and limits the aggregate amount of such interest and charges to 2½ per cent. per month on loans of less than $100 and 2 per cent. on any remainder of an unpaid balance of principal in excess of that amount, is not invalid on ground that it authorizes greater charges than permitted by the usury law, an initiative measure, and constitutional amendment, limiting interest to 10 per cent. Id.

2. Construction and application

The Small Loan Act limiting interest to 10 per cent. per annum did not permit rate of interest greater than 10 per cent. allowed by Const. art. 20, § 22 because of provision that a month should be a period of 30 consecutive days, and that the aggregate total of interest and charges should not exceed 2½ per cent. per month on the first $100 of any loan and 2 per cent. per month on the remainder of the loan. Ex parte Fuller (1940) 102 P.2d 321, 15 C.2d 425.

The restrictions on interest, fees, bonuses, commissions, discounts, or other compensation set forth in Const. art. 20, § 22 which is fixed in the aggregate at 10 per cent. per annum, applies to loans in excess of $300.00 made by a person licensed under the Small Loan Act but a loan made by a licensee under said act in excess of $300.00 cannot be divided so that the charge as fixed by the Small Loan Act applies to the first $300.00 and the constitutional provisions to the remainder. 8 Ops. Atty. Gen. 133.

Under California Small Loan Act, persons engaged exclusively in the business of lending money in amounts in excess of $300.00 are not required to obtain a license from the Commissioner of Corporations under the Small Loan Act. Id.

3. In general

Small Loan Act, as amended, does not prohibit a licensee under said act from making unsecured loans in amounts in excess of $300.00. 8 Ops. Atty. Gen. 133.

4. Amount of loan

Where an industrial loan company, under the Industrial Loan Act, has an existing contract with a borrower and is charging the maximum on the first $300 on such loan, and a second loan is made to the same borrower, the two loan are to be considered together, and on the excess over $300, 10% per annum is the limit of the charges. 13 Ops. Atty. Gen. 144.

Small Loan Act may legally be amended to specifically limit the amount of interest and charges that may be exacted from borrowers on loans regardless of size. 9 Ops. Atty. Gen. 49.

Small Loan Act, may legally be amended to specifically limit the amount of interest and charges that may be exacted from borrowers of amounts up to and including $500, instead of $300. Id.

Small Loan Act may legally be amended to specifically limit the amount of interest and charges exacted from a borrower of an amount in excess of $300 to ten per cent per annum permitting however, a rate of charge of 2½ per cent per month for the first $100 and two per cent per month for the next $200 of such loan. Id.

§ 24452. *Charges for service and expense; maximum aggregate amount of charges and interest.* No licensee shall contract for or receive any service or expense charges beyond the actual outlay. The charges for actual outlay, when added to interest computed at the rate permitted by this article, shall not exceed an aggregate amount of two and one-half per cent (2½%) per month on that portion of the unpaid principal balance of any loan not in excess of one hundred dollars ($100), and two percent (2%) per month or any remainder of such unpaid principal balance. (Stats. 1951, c. 364, p. 1151, § 24452.)

Derivation: Stats. 1939, c. 1045, p. 2892, § 16.

LAW REVIEW COMMENTARIES

Discounted interest as usury. (1945) 18 So. Cal. L.R. 274.

Interest on obligations after maturity. (1945) 18 So. Cal. L.R. 258.

Protection afforded the borrower by California Usury Law. (1932) 20 C.L.R. 361.

The small loan problem. (1939) 27 C.L.R. 286.
Usury. Raymond B. McConlogue (1928) 1 So. Cal. L.R. 253.
Usury, remedies of borrower and defenses of lender. (1951) 39 C.L.R. 604.

NOTES OF DECISIONS

Amount of loan 4
Construction and application 2
Purpose 3
Validity 1

1. Validity

The Small Loan Act prohibiting an interest charge of more than 10 per cent. per annum and also denying a licensee the right to contract for or receive service or expense charges beyond actual outlay and limiting the aggregate amount of such interest and charges to 2½ per cent. per month on loans of less than $100 and 2 per cent. on any remainder of an unpaid balance of principal in excess of that amount, is not invalid on ground that it discriminates between lenders charging different rates of interest on theory that the maximum limitation on the aggregate amounts which could be charged borrowers did not take into consideration variations in interest charges. Ex parte Fuller (1940) 102 P. 2d 321, 15 C. 2d 425.

The Small Loan Act limiting amounts which may be exacted for brokerage or other compensation paid to a third person or expense items such as appraisals, recording fees, insurance or similar charges is not invalid as in conflict with the usury law, an initiative measure, which restricts interest but leaves the Legislature supreme in all other fields of loan regulation. Id.

The Small Loan Act limiting amounts which may be charged for brokerage or other compensation paid to a third person or expense items such as appraisals, recording fees, insurance or similar charges, could not be held unconstitutional on theory that it deprives lender of right to collect legal costs authorized by usury law, an initiative measure, since the failure of the usury law to limit charges did not operate as a prohibition against any limitation being imposed upon charges. Id.

2. Construction and application

The Small Loan Act limiting interest to 10 per cent. per annum did not permit rate of interest greater than 10 per cent. allowed by Const. art. 20, § 22, because of provision that a month should be a period of 30 consecutive days and that the aggregate total of interest and charges should not exceed 2½ per cent. per month on the first $100 of any loan and 2 per cent. per month on the remainder of loan. Ex parte Fuller (1940) 102 P.2d 321, 15 C.2d 425.

The Small Loan Act limiting amounts which may be exacted for brokerage or other compensation paid to a third person or expense items such as appraisals, recording fees, insurance or similar charges is not invalid as in conflict with the usury law, an initiative measure, which restricts interest but leaves the Legislature supreme in all other fields of loan regulation. Id.

3. Purpose

Brokerage or other compensation paid to a third person for procuring loan or expense items such as appraisals, recording fees, insurance or similar charges are proper subjects of regulation, and one purpose of the Small Loan Act was to limit the amounts which may be exacted therefor. Ex parte Fuller (1940) 102 P.2d 321, 15 C.2d 425.

4. Amount of loan

Small Loan Act may legally be amended to specifically limit the amount of interest and charges that may be exacted from borrowers on loans regardless of size. 9 Ops. Atty. Gen. 49.

Small Loan Act may legally be amended to specifically limit the amount of interest and charges that may be exacted from borrowers of amounts up to and including $500, instead of $300. Id.

Small Loan Act may legally be amended to specifically limit the amount of interest and charges exacted from a borrower of an amount in excess of $300 to ten per cent. per annum permitting however, a rate of charge of 2½ per cent. per month for the first $100 and two per cent. per month for the next $200 of such loan. Id.

§24453. *Insurance of property securing loan; maximum aggregate charge.* If any property securing a loan made by a licensee is insured against loss in favor of the licensee, the service or expense charges for actual outlay, when added to interest computed at the rate permitted by this article, shall in no event exceed an aggregate amount of two percent (2%) per month on the unpaid principal balance of the loan. (Stats. 1951, c. 364, p. 1151, § 24453.)

Derivation: Stats. 1939, c. 1045, p. 2892, § 16.

LAW REVIEW COMMENTARIES

Discounted interest as usury. (1945) 18 So.Cal.L.R. 274.
Interest on obligations after maturity. (1945) 18 So.Cal.L.R. 258.
Protection afforded the borrower by California Usury Law. (1932) 20 C.L.R. 361.
The small loan problem. (1939) 27 C.L.R. 286.
Usury. Raymond B. McConlogue. (1928) 1 So.Cal.L.R. 253.
Usury, remedies of borrower and defenses of lender. (1951) 39 C.L.R. 604.

§ 24454. *Charges in excess of maximum.* No amount in excess of that expressly permitted by this article shall be directly or indirectly charged, contracted for, or received, by any person, and the total charges including interest, of the lender, the broker, and any other person, in the aggregate, shall not exceed the amount permitted by this article on any one loan for the negotiating, making, collecting, and enforcing of the loan. (Stats. 1951, c. 364, p. 1151, § 24454.)

Derivation: Stats. 1939, c. 1045, p. 2892, § 16.

CROSS REFERENCES

Similar provision, see § 24462.

LAW REVIEW COMMENTARIES

Discounted interest as usury. (1945) 18 So.Cal.L.R. 274.
Interest on obligations after maturity. (1945) 18 So.Cal.L.R. 258.
Protection afforded the borrower by California Usury law. (1932) 20 C.L.R. 361.
The small loan problem. (1939) 27 C.L.R. 286.
Usury. Raymond B. McConlogue. (1928) 1 So.Cal.L.R. 253.
Usury, remedies of borrower and defenses of lender. (1951) 39 C.L.R. 604.

NOTES OF DECISIONS

1. In general

In action by notary against employer, a personal property broker and small loan agency, to recover notary fees, evidence that notary, under threat of discharge from employment, indorsed check for fees to which she was entitled under Personal Property Brokers Act and Small Loan Act to employees' association organized by employer, supported finding that employer exercised duress upon notary. Millsap v. National Funding Corp. (1944) 152 P. 2d 634, 66 C.A. 2d 658.

§ 24455. *Statutory fees.* This article does not prohibit any licensee from contracting for, collecting, or receiving the statutory fee paid by the licensee to any public officer for acknowledging, filing, recording, or releasing in any public office any instruments securing the loan or executed in connection with the loan. Such fees are not included in determining the maximum charges which may be made under this article. (Stats. 1951, c. 364, p. 1151, § 24455.)

Derivation: Stats. 1939, c. 1045, p. 2892, § 16.

CODE COMMISSION NOTES

Provision re recording fees added to make it clear that such fees are not a part of the charges.

§ 24467. *Real estate liens.* No licensee shall take a lien upon real estate as security for any loan made under this division, except such lien as is created by law upon the recording of an abstract judgment. (Stats. 1951, c. 364, p. 1153, § 24467.)

Derivation: Stats. 1939, c. 1045, p. 2891, § 15.

CROSS REFERENCES

Creation of lien, see Code of Civil Procedure § 674.

§ 24468. *Confession of judgment; power of attorney.* No licensee shall take any confession of judgment or any power of attorney, except a power of attorney taken to effectuate transfer of the ownership of any motor vehicle at the time of making the loan. (Stats. 1951, c. 364, p. 1153, § 24468.)

Derivation: Stats. 1939, c. 1045, p. 2891, § 15.

CROSS REFERENCES

Confession of judgment, see Code of Civil Procedure § 1132 et seq.

§ 24469. *Required provisions of loan instruments.* No licensee shall take any note, promise to pay, or security that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of charge. (Stats. 1951, c. 364, p. 1153, § 24469.)

Derivation: Stats. 1939, c. 1045, p. 2891, § 15.

§ 24470. *Incomplete loan instruments.* No licensee shall take any instrument in which blanks are left to be filled in after execution. (Stats. 1951, c. 364, p. 1153, § 24470.)

Derivation: Stats. 1939, c. 1045, p. 2891, § 15.

§ 24471. *Maximum loan term.* No licensee shall enter into a contract for a loan for a longer period than 24 months after the making of the loan. (Stats. 1951, c. 364, p. 1153, § 24471.)

Derivation: Stats. 1939, c. 1045, p. 2895, § 19; Stats. 1943, c. 251, p. 1165, § 2.

§ 24472. *Wage assignments.* The payment of three hundred dollars ($300) or less by a lender or broker in money, credit, goods, or things in action as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, is for the purposes of regulation under this division, a loan secured by such assignment, and the amount by which the assigned compensation exceeds the amount of the consideration actually paid is interest and charges upon or for the loan from the date of payment to the date the compensation is payable. The section shall not be construed as modifying or affecting existing statutes governing wage assignments in the State, or as authorizing such assignments. (Stats. 1951, c. 364, p. 1153, § 24472.)

Derivation: Stats. 1939, c. 1045, p. 2895, § 18.5.

Library references: Pawnbrokers and Money Lenders ⟸6.7; C.J.S. Pawnbrokers § 5.

CROSS REFERENCES

Assignment of wages, generally, see Labor Code § 300.

§ 24473. *Loan requirements; lender.* Each licensed lender shall:

(a) *Statement of terms of loan.* Deliver or cause to be delivered to the borrower, or any one thereof, at the time the loan is made, a statement showing in clear and distinct terms the name, address, and license number of the lender and the broker, if any. The statement shall show the date, amount, and maturity of the loan contract, how and when repayable, the nature of the security for the loan, and the agreed rate of charge.

(b) *Signed statement of borrower.* Obtain from the borrower a signed statement as to whether any person has performed any act as a broker in connection with the making of the loan. If such statement discloses that a broker or other person has participated, then the lender shall obtain a full statement of all sums paid or payable to the broker or other person. The lender shall keep such statements for a period of two years from and after the date the loan has been paid in full, or has matured according to its terms, or has been charged off.

(c) *Advance payments.* Permit payment to be made in advance in any amount on any contract of loan at any time, but the licensee may apply such payment first to all charges due at the agreed rate up to the date of such payment, not to exceed the maximum rate permitted by this article.

(d) *Receipt for payments.* Deliver or cause to be delivered to the person making any payment, at the time each payment is made on account of any loan, a plain and complete receipt showing the total amount received, identifying the loan contract upon which the payment is applied, and stating the unpaid principal balance of the loan.

(e) *Cancellation and return of loan instruments and security.* Upon repayment of any loan in full, release all security for the loan, endorse and return any

certificate of ownership, cancel or plainly mark "paid" and return to the borrower or person making final payment, any note, chattel mortgage, assignment, or order signed by the borrower, except such as are a part of the court record in any action, or such as have been delivered to a third person for the purpose of carrying out their terms. (Stats. 1951, c. 364, p. 1153, § 24473.)

Derivation: Stats. 1939, c. 1045, p. 2893, § 17.

ADMINISTRATIVE CODE REFERENCES

Statement delivered to borrower, contents, see 10 Cal. Adm. Code 1431.

NOTES OF DECISIONS

1. In general

Requirements of law that could only apply to loans of money were not intended to apply to loans of credit and one engaged in loaning credit would not be expected to comply with them. Master Charge v. Daugherty (1954) 267 P.2d 821, 123 C.A.2d 700.

§ 24474. *Loan requirement; broker.* Each licensed broker shall:

(a) *Statement of agreement with broker.* Deliver to the borrower, or any one thereof, at the time the final negotiation or arrangement is made, a statement showing in clear and distinct terms the name, address, and license number of the broker and the lender. The statement shall show the date, amount, and terms of the agreement with such broker, and all amounts paid or to be paid to such broker and to any person other than the lender.

(b) *Delivery of statement to lender.* Deliver to the lender making the loan a copy of the statement referred to and described in subdivision (a) of this section.

(c) *Receipt for payments.* Deliver to the person making any payment to the broker to be retained by the broker, a plain and complete receipt for each payment made, at the time it is made, showing the total amount received, identifying the brokerage agreement and the loan contract upon which such payment is applied and showing the application thereof. If the payment is made by a person other than the lender, a copy of the receipt shall be delivered to the lender.

(d) *Cancellation and return of instruments and security.* When the borrower pays the loan in full, see to it that the lender fully complies with subdivision (e) of Section 24473. (Stats. 1951, c. 364, p. 1154, § 24474.)

Derivation: Stats. 1939, c. 1045, p. 2893, § 17.

ADMINISTRATIVE CODE REFERENCES

Statement delivered to borrower, contents, see 10 Cal. Adm. Code 1431.

DIVISION 10

SMALL LOANS

CHAPTER 1. DEFINITIONS

ARTICLE 1. DEFINITIONS

§ 24000. *Title of Division*

Law Review Commentaries

Small loan legislation (1960) 7 U.C.L.A. Law R. 649.

1. Validity

Small Loan Law, which is primarily to protect citizens of California from fraudulent and unconscionable conduct of those in the lending business, is matter of local concern for purpose of determining whether it violates commerce clause insofar as a lender engaged in interstate commerce is concerned. People v. Fairfax Family Fund, Inc. (1965) 47 Cal. Rptr. 812, 238 C.A. 2d 881.

2. Purpose

Small Loan Law of California is legislation designed for the public welfare. People v. Fairfax Family Fund, Inc. (1965) 47 Cal. Rptr. 812, 238 C.A. 2d 881.

3. In general

Activities of lender, licensed under Small Loan Law, § 24000 et seq., who engages in business of lending money to borrowers to enable them to purchase automobile

insurance, do not fall within purview of Unruh Act. Civ. C., § 1801 et seq. 34 Ops. Atty. Gen. 288.

The Small Loan Law precludes licensee from carrying on a small loan business through the medium of insurance agents and brokers scattered about the state, whose places of business are not designated in the licensee's license, unless the licensee obtains a license for each office or place where the loans are to be initiated, and otherwise complies with the Small Loan Law. 27 Ops. Atty. Gen. 403.

ARTICLE 2. EXEMPTIONS

Sec.
24051.1 Inapplicability of division to certain loans of credit [New].
24055. Cemetery brokers [New].

§ 24051.1 *Inapplicability of division to certain loans of credit*

This division does not apply to any loan of credit made pursuant to a plan having all of the following characteristics:

(a) Credit cards are issued pursuant TO WRITTEN APPLICATION THEREFOR AND to the plan whereby the organization issuing such cards shall be enabled to acquire those certain obligations which its members in good standing incur with those persons with whom the organization has entered into written agreements setting forth said plan, and where the obligations are incurred pursuant to such agreements; or whereby the organization issuing such cards shall be enabled to extend credit to its members.

(b) The fee for such credit cards is designed to cover the administrative costs of the plan and does not exceed * * * TWENTY-FIVE dollars * * * ($25) per year.

(c) Any charges, discounts, or fees resulting from the acquisition of such charges shall be paid to the organization issuing said credit cards by the persons, corporations, or associations with whom the organization has entered into such written agreements (Added Stats. 1955, c. 1943, p. 3574, § 1, as amended Stats. 1959, c. 1249, p. 3325, § 1; Stats. 1965, c. 271. p. 1267, § 1.)

(Language in capital letters indicates changes or additions by amendment. Asterisks indicate deletions by amendments.)

1959 Amendment. Rewrote subds. (a) and (c), which prior thereto related to drivers cards.

1965 Amendment. Inserted, in subd. (a), the words "to written application therefor and"; and increased fee, in subd. (b), from $10 to $25.

Library references: Pawnbrokers and Money Lenders ⇐6.1; C.J.S. Money Lenders § 5.

§ 24055. *Cemetery brokers*

This division does not apply to any cemetery broker licensed under the Cemetery Act, Chapter 19 (commencing at Section 9600) of Division 3 of the Business and Professions Code, when transacting business as authorized by the Cemetery Act. (Added Stats. 1957, c. 474, p. 1509, § 1.)

Library references: Cemeteries ⇐3; Pawnbrokers and Money Lenders ⇐3; C.J.S. Cemeteries § 2; C.J.S. Pawnbrokers § 4.

§ 24405. *Name and place of transaction of business*

1. Construction and application

The Small Loan Law precludes licensee from carrying on a small loan business through the medium of insurance agents and brokers scattered about the state, whose places of business are not designated in the licensee's license, unless the licensee obtains a license for each office or place where the loans are to be initiated, and otherwise complies with the Small Loan Law. 27 Ops.Atty. Gen. 403.

§ 24451. *Maximum interest rate*

No licensee shall make any loan of * * * ONE THOUSAND DOLLARS ($1,000), or less, and contract or receive thereon interest at a rate exceding ten percent (10%) per year, computed on the unpaid balance of the loan. (As amended Stats.1965, c. 1202, p. 3023, § 2.)

1965 Amendment. Increased amount from $300 to $1,000.

§ 24452. *Charges for service and expense; maximum aggregate amount of charges and interest*

No licensee shall contract for or receive any service or expense charges beyond the actual outlay. The charges for actual outlay, when added to interest com-

puted at the rate permitted by this article, shall not exceed an aggregate amount of two and one-half percent (2½%) per month on that portion of the unpaid principal balance of any loan not in excess of one hundred ($100), and two percent (2%) per month ON THAT PORTION OF THE UNPAID PRINCIPAL BALANCE IN EXCESS OF ONE HUNDRED DOLLARS ($100) BUT NOT IN EXCESS OF THREE HUNDRED ($300) AND FIVE-SIXTHS OF ONE PERCENT (⅚ of 1%) on any remainder of such unpaid principal balance. (As amended Stats. 1965, c. 1202, p. 3023, § 3.)

1965 Amendment. Inserted, in second sentence, the words "on that portion of the unpaid principal balance in excess of one hundred dollars ($100) but not in excess of three hundred ($300) and five-sixths of one percent (⅚ of 1%)."

§ 24453. *Insurance of property securing loan; maximum aggregate charge*

If any property securing a loan made by a licensee is insured against loss in favor of the licensee, the service or expense charges for actual outlay, when added to interest computed at the rate permitted by this article, shall in no event exceed an aggregate amount of two percent (2%) per month on ALL PORTIONS OF the unpaid principal balance of the loan NOT IN EXCESS OF THREE HUNDRED DOLLARS ($300). (As amended Stats. 1965, c. 1202, p. 3024, § 4.)

1965 Amendment. Inserted the words "all portions of" and "not in excess of three hundred dollars ($300)."

§ 24458. *Enforcement of out-of-state loans*

A loan lawfully made outside the state of the amount or value of * * * ONE THOUSAND DOLLARS ($1,000) or less, may be enforced in this state as to the unpaid principal balance of the loan together with the interest, consideration, brokerage, and all other charges, to the extent of but not to exceed the unpaid principal balance and the aggregate amount of interest, consideration, brokerage, and all other charges permitted by this division in connection with a loan of the same amount made within this state. (As amended Stats.1965, c. 1202, p. 3024, § 5.)

1965 Amendment. Increased amount or value from $300 to $1,000.

§ 24472. *Wage assignments*

The payment of * * * ONE THOUSAND DOLLARS ($1,000) or less by a lender or broker in money, credit, goods, or things in action as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, is for the purposes of regulation under this division, a loan secured by such assignment, and the amount by which the assigned compensation exceeds the amount of the consideration actually paid is interest and charges upon or for the loan from the date of payment to the date the compensation is payable. This section shall not be construed as modifying or affecting existing statutes governing wage assignments in the state, or as authorizing such assignments. (As amended Stats.1965, c. 1202, p. 3024, § 6.)

(Language in capital letters indicates changes or additions by amendment. Asterisks indicate deletion by amendment.)

1965 Amendment. Increased amount from $300 to $1,000.

CHAPTER 4. REVOCATION AND PENALTIES

§ 24611. *Conduct of hearings; applicability of Government Code*

Law Review Commentaries

Administrative hearings. Paul A. Winton (1961) 36 S.Bar J. 331.

DIVISION 11. NATIONAL HOUSING ACT LOANS

CHAPTER 1. INVESTMENTS

§ 27000. *First liens accepted for insurance*

Law Review Commentaries

Redevelopment and clearance of municipal slum areas. Eugene B. Jacobs and Jack G. Levine (1957) 8 Hastings L.J. 241.

CALIFORNIA CIVIL CODE

Automobile Sales Finance Act—Section 2981 et seq.

Sections: 2982
2983
2983.1
2983.2
2983.3
2984.1
2984.2
2984.3

CHAPTER 2b. AUTOMOBILE SALES FINANCE ACT [NEW]

Sec.
2981. Definitions.
2982. Formalities of conditional sales contracts.
2983. Enforceability of contract; improper form or finance or delinquency charges; correction; recovery by buyer.
2983.1 Enforceability of contract; violation of provisions relating to prepayment, refinancing, or refund of finance charge; election to enforce or rescind.
2983.2 Notice of intent to sell repossessed motor vehicles; form; prerequisite to liability for delinquency.
2983.3 Default as prerequisite to repossession or acceleration of maturity.
2983.4 Prevailing party's right to attorney's fees and costs.
2983.5 Cutting off right of action or defense by assignment; notice of assignment; necessity and form.
2984. Correction of contract to comply with chapter.
2984.1 Contract provision regarding insurance coverage.
2984.2 Enforceability of provision for inclusion of title to or lien on other property.
2984.3 Buyer's acknowledgement of delivery of copy of contract; presumptions.

Chapter 2b added by Stats. 1961 c. 1626, p. 3534, § 4, effective Jan. 1, 1962.

§ 2981. *Definitions*

As used in this chapter, unless the context otherwise requires:

(a) "Conditional sale contract" means:

(1) Any contract for the sale of a motor vehicle between a buyer and a seller, with or without accessories, under which possession is delivered to the buyer but the title vests in the buyer thereafter only upon the payment of all or part of the price, or upon the performance of any other condition, or

(2) Any contract for the bailment or leasing of a motor vehicle between a buyer and a seller, with or without accessories, by which the bailee or lessee agrees to pay as compensation a sum substantially equivalent to the value of the property, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the property upon full compliance with the terms of the contract, or

(3) Any contract for the sale of a motor vehicle between a buyer and a seller, with or without accessories, under which possession is delivered to the buyer, and a lien on the property is to vest in the seller as security for the payment of part or all of the price, or for the performance of any other condition.

(b) "Seller" means a person engaged in the business of selling or leasing motor vehicles under conditional sale contracts.

(c) "Buyer" means the person who buys or hires a motor vehicle under a conditional sale contract.

(d) "Person" includes an individual, company, firm, association, partnership, trust, corporation, or other legal entity.

(e) "Cash price" means the amount for which the seller would sell and transfer to the buyer unqualified title to the motor vehicle described in the conditional sale contract, if the property were sold for cash at the seller's place of business on the date the contract is executed, and includes any applicable sales taxes and the total amount paid or to be paid to any public officer in connection with the transaction.

(f) "Down payment" means that part of the cash price which the buyer pays or agrees to pay to the seller in cash or property value or money's worth at or

prior to delivery by the seller to the buyer of the motor vehicle described in the conditional sale contract, including the cash, property or thing of value which the buyer deposits with the seller pending execution of a conditional sale contract, which cash, property or thing of value shall be refundable to the buyer in the event a conditional sale contract is not executed, or if the property or thing of value traded in cannot be returned, the cash value thereof.

(g) "Unpaid balance" means the difference between (e) and (f), plus all insurance premiums (except for credit life or disability insurance when the amount thereof is included in the finance charge), which are included in the contract balance.

(h) "Finance charge" means any amount which the buyer agrees to pay to the seller in excess of the unpaid balance.

(i) "Contract balance" means the amount unpaid under the conditional sale contract, which the buyer agrees to pay in installments as originally provided therein, and shall not include amounts for which the buyer may later become obligated under the terms of the contract in connection with insurance, repairs to or preservation of the motor vehicle, preservation of the security interest therein, or otherwise.

(j) "Motor vehicle" means any vehicle required to be registered under the Vehicle Code which is bought for use primarily for personal or family purposes, and does not mean any vehicle which is bought for use primarily for business or commercial purposes.

(k) "Purchase order" means a sales order, car reservation, statement of transaction or any other such instrument used in the conditional sale of a motor vehicle pending execution of a conditional sale contract. The purchase order shall conform to the disclosure requirements of paragraphs 1 to 8, inclusive, and paragraph 10 of subdivision (a) of Section 2982 and Section 2984.1. (Added Stats. 1961, c. 1626, p. 3534, § 4, effective Jan. 1, 1962.)

Sections 6 and 7 of Stats. 1961, c. 1626, p. 3541, read as follows:

"Sec. 6. This act shall take effect on January 1, 1962, and shall not apply to conditional sale contracts executed prior thereto.

"Sec. 7. This act will be known as the Rees-Levering Motor Vehicle Sales and Finance Act."

Former section 2981 repealed by Stats. 1961, c. 1626, p. 3534, § 1. Prior to repeal, the former section was amended by Stats. 1959, c. 1466, p. 3762, § 1.

The 1959 amendment of former section 2981 added after the words insurance premiums in subd. (g) "(except for credit life or disability insurance when the amount thereof is included in the time price differential)". It also added the following clause at the end of subd. (i) "and shall not include amounts for which the buyer may later become obligated under the term of the contract in connection with insurance, repairs to or preservation of the motor vehicle, preservation of the security interest therein, or otherwise."

§ 2982. *Formalities of conditional sales contracts*

(a) *Form; signatures; delivery of copy of contract; contents.* Every conditional sale contract for the sale of a motor vehicle, with or without accessories, shall be in writing and, if printed, shall be printed in type no smaller than six point, and shall contain in a single document all of the agreements of the buyer and seller with respect to the total cost and the terms of payment for the motor vehicle, including any promissory notes or any other evidences of indebtedness. The conditional sale contract or a purchase order shall be signed by the buyer or his authorized representative and by the seller or its authorized representative, and an exact copy thereof shall be furnished the buyer by the seller at the time the buyer and the seller have signed the contract or purchase order. No motor vehicle shall be delivered under this chapter until the seller delivers to the buyer a fully executed copy of the conditional sale contract or purchase order. The seller shall not obtain the signature of the buyer to a contract when it contains blank spaces to be filled in after it has been signed. Every conditional sale contract shall contain, although not necessarily in the sequence or order set forth below, the following separate items.

1. The cash price of the motor vehicle described in the conditional sale contract.

2. The amount of the buyer's down payment, and whether made in cash or represented by the net agreed value of described property traded in, or both, together with a statement of the respective amounts credited for cash and for such property.

3. The amount unpaid on the cash price, which is the difference between Items 1 and 2.

4. The cost to the buyer of any insurance, the premium for which is included in the contract balance. Any such cost for credit life or disability insurance may be included in the finance charge if the amount thereof is separately stated on the face of the contract.

5. The amount of the unpaid balance, which is the sum of Items 3 and 4.

6. The amount of the finance charge.

7. The contract balance owed by the buyer to the seller, which is the sum of Items 5 and 6.

8. The number of installments required to pay the contract balance, the amount of each installment, and the date for payment of the installments.

9. The names and addresses of all persons to whom the notice required under Section 2983.2 and permitted under Sections 2983.5 and 2984 of this code is to be sent.

10. A notice, in at least eight-point bold type if the contract is printed, reading as follows: "Notice to the buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(b) *Insurance.* If any charge for insurance (other than for credit life or disability) is included in the contract balance and disbursement of any part thereof be made more than one year after the date of the conditional sale contract, any finance charge on the amount to be disbursed after one year shall be computed from the month the disbursement is to be made to the due date of the last installment under the conditional sale contract.

(c) *Finance charge; delinquency charge; collection costs and fees.* The amount of the finance charge in any conditional sale contract for the sale of a motor vehicle, with or without accessories, shall not exceed 1 percent of the unpaid balance multiplied by the number of months (computed on the basis of a full month for any fractional month period in excess of 15 days) elapsing between the date of the contract and the due date of the last installment, or twenty-five dollars ($25), whichever is greater. The contract may provide for a delinquency charge or charges on any installment in default for a period of not less than 10 days in an amount not to exceed in the aggregate 5 percent of the installment, which amount may be collected only once on any installment regardless of the period during which it remains in default. The contract may provide for reasonable collection costs and fees in the event of delinquency.

(d) *Payment before maturity; refund of unearned finance charge.* Any provision in any conditional sale contract for the sale of a motor vehicle to the contrary notwithstanding, the buyer shall have the privilege of paying at any time in full the indebtedness evidenced by the contract. Whenever an indebtedness is liquidated prior to maturity by prepayment or refinancing, or upon surrender or repossession and resale of the motor vehicle, the holder shall thereupon refund to the buyer the unearned portion of the finance charge. The refund may be made in cash or credited to the amount due on the obligation of the buyer. The amount of the refund shall represent at least as great a proportion of the finance charge, after first deducting therefrom twenty-five dollars ($25), as the sum of the periodic time balances payable more than 15 days after the date of prepayment (or other event entitling the buyer to the refund) bears to the sum of all of the periodic time balances under the schedule of installments in the contract. The provisions of this subdivision shall not impair the right of the seller or his assignee to receive deliquency charges on delinquent installments and reasonable costs and fees as provided in subdivision (c) of this section. Where the amount of such refund is less than one dollar ($1), no refund need be made.

(e) *Compensation for referral of customers.* The contract shall also include any promise by the seller or anyone with his knowledge, made as an inducement to the buyer to become a party to the conditional sale contract or made incidental to negotiations relating thereto, to compensate the buyer for referring customers or prospective customers to the seller or for referring the seller to such customers or prospective customers.

In any case in which, pursuant to this subsection, the contract contains a promise to compensate the buyer for referring customers or prospective customers to the seller or the seller to such customers, the contract must contain a provision to the effect that the outstanding balance at any time is reduced by any amount of compensation owing pursuant to such promise. (Added Stats. 1961, c. 1626, p. 3535, § 4, as amended Stats. 1963, c. 1319, p. 2839, § 1.)

Former section 2982 repealed by Stats. 1961, c. 1626, p. 3534, § 2. Prior to repeal, the former section was amended by Stats. 1957, c. 613, p. 1822, § 1; Stats. 1959, c. 1466, p. 3763, § 2; Stats. 1961, c. 243, p. 1269, § 1.

Former section 2982, as last amended by Stats. 1961, c. 243, p. 1270, § 1, read as follows:

"(a) Every conditional sale contract for the sale of a motor vehicle, with or without accessories, shall be in writing, and if printed, shall be printed in type no smaller than six point, and shall contain all of the agreements between the buyer and the seller relating to the personal property described therein. It shall be signed by the buyer or his authorized representative and by the seller or its authorized representative, and when so executed an exact copy thereof shall be delivered by the seller to the buyer at the time of its execution. It shall recite the following separate items as such, in the following order:

"1. The cash price of the personal property described in the conditional sale contract.

"2. The amount of the buyer's down payment, and whether made in cash or represented by the net agreed value of described property traded in, or both, together with a statement of the respective amounts credited for cash and for such proprty. As soon as received by the dealer the dealer shall refund to the buyer or credit to the buyer on the next payment due the amount realized on any insurance policy, or rights thereunder, assigned to the seller by the buyer in connection with the conditional sale. Failure of the dealer to comply with the foregoing provision shall in no way affect the validity or enforceability of the conditional sale contract.

"3. The amount unpaid on the cash price, which is the difference between Items 1 and 2.

"4. The cost to the buyer of any insurance, the premium for which is included in the contract balance; provided, any such cost for credit life or disability insurance may be included in the time price differential if separately stated on the face of the contract.

"5. A description and itemization of amounts, if any, which will actually be paid by the seller or his assignee to any public officer as fees in connection with the transaction, which are included in the contract balance.

"6. The amount of the unpaid balance, which is the sum of Items 3, 4, and 5.

"7. The amount of the time price differential.

"8. The contract balance owed by the buyer to the seller, which is the sum of Items 6 and 7.

"9. The number of installments required to pay the contract balance, the amount of each installment, and the date for payment of the installments.

"10. The names and addresses of all persons to whom the notice required under subdivision (g) of this section is to be sent.

"(b) If any charge for insurance is included in the contract balance, an insurance policy or policies or a certificate of insurance under a master policy shall be issued and the seller shall within 30 days after the execution of the conditional sale contract send or cause to be sent to the buyer the original or an exact copy of such policy or policies or certificate.

"(c) The amount of the time price differential in any conditional sale contract for the sale of a motor vehicle, with or without accessories, shall not exceed 1 percent of the unpaid balance multiplied by the number of months, including any excess fraction thereof as one month, elapsing between the date of such contract and the due date of the last installment, or twenty-five dollars ($25), whichever is greater; provided, that such contract may provide for interest on any delinquent installment from and after the date of delinquency, and for reasonable collection costs and fees in the event of delinquency.

"(d) Any provision in any conditional sale contract for the sale of a motor vehicle to the contrary notwithstanding, the buyer may satisfy in full the indebtedness evidenced by such contract at any time before the final maturity thereof, and in so satisfying such indebtedness shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the time price differential, after first

deducting from such time price differential a minimum charge of not to exceed twenty-five dollars ($25), as the sum of the periodic time balances after the month in which such contract is paid in full bears to the sum of all of the periodic time balances under the schedule of payments in the contract, both sums to be determined according to the monthly balances which would result if the indebtedness were paid according to the terms of the contract; provided, however, that the provisions of this subsection shall not impair the right of the seller or his assignee to receive a minimum time price differential of twenty-five dollars ($25), or to receive interest on delinquent installments or reasonable collection costs and fees, as provided in subsection (c) of this section; and provided further, that where the amount of such refund credit would be less than one dollar ($1), no refund need be made.

"(e) If the seller, except as the result of an accidental or bona fide error in computation, shall violate any provision of subdivisions (c) or (d) of this section, the conditional sale contract shall not be enforceable, except by a bona fide purchaser for value, and the buyer may recover from the seller in a civil action the total amount paid on the contract balance by the buyer to the seller or his assignee pursuant to the terms of such contract.

"(f) If the holder of such contract, except as the result of an accidental or bona fide error in computation, shall violate any provision of subdivision (d) of this section, the buyer may recover from such holder in a civil action the total amount paid on the contract balance by the buyer to such holder pursuant to the terms of such contract.

"(g) Any provision in any conditional sale contract for the sale of a motor vehicle to the contrary notwithstanding, at least five days' written notice of intent to sell a repossessed motor vehicle must be given to all persons liable on the contract. Such notice may be given by mail and need be given only to such persons as have furnished the seller or his assignee with an address to which such notice may be sent. If given by mail and either the place of deposit in the mail or the place of address is outside of this State, however, the period of such notice shall be 10 days instead of five days. During such period after such notice is sent, the person or persons liable on the contract may pay in full the indebtedness evidenced by such contract. Such persons shall be liable for any deficiency after sale of the repossessed motor vehicle only if notice has been given pursuant to this subdivision.

"(h) No such contract shall contain any provision by which, in the absence of default by the buyer in the performance of any of his obligations under the contract, the holder may accelerate the maturity of any part or all of the amount owing thereunder or repossess the motor vehicle."

§ 298.5. *Repealed. Stats. 1961, c. 1626, p. 3534, § 3, effective Jan. 1, 1962*

This section, added by Stats. 1959, c. 1874, p. 4435, § 1, read as follows:

"A conditional sales contract may contain a statement to the effect that the buyer or registered owner shall give written notice to the legal owner of any change of address of the buyer or registered owner within 30 days of such change of address. This statement may be printed in the contract in 6 point type or larger and may be separately signed or acknowledged by the buyer at the time of entering into a contract. If this statement is signed or acknowledged it then becomes a part of the contract."

§ 2983. *Enforceability of contract; improper form or finance or delinquency charges; correction; recovery by buyer*

If the seller, except as the result of an accidental or bona fide error in computation, violates any provision of subdivisions (a) or (c) of Section 2982, the conditional sale contract shall not be enforceable, except by a bona fide purchaser, assignee or pledgee for value or until after the violation is corrected as provided in Section 2984, and if the violation is not corrected the buyer may recover from the seller the total amount paid, pursuant to the terms of the contract, by the buyer to the seller or his assignee. The amount recoverable for property traded in as all or part of the down payment shall be equal to the agreed cash value of such property as the value appears on the conditional sales contract. (Added Stats. 1961, c. 1626, p. 3537, § 4, effective Jan. 1, 1962.)

§ 2983.1 *Enforceability of contract; violation of provisions relating to prepayment, refinancing, or refund of finance charge; election to enforce or rescind*

If the seller or holder of a conditional sale contract, except as the result of an accidental or bona fide error of computation, violates any provision of subdivision (d) of Section 2982, the buyer may recover from such person three times the amount of any finance charge paid to that person.

If a holder acquires a conditional sale contract without actual knowledge of the violation by the seller of subdivisions (a) or (c) of Section 2982, the contract shall be valid and enforceable by such holder except (unless the violation is corrected as provided in Section 2984) the buyer is excused from payment of the unpaid finance charge.

If a holder acquires a conditional sale contract with knowledge of such violation of subdivisions (a) or (c) of Section 2982, the conditional sale contract shall not be enforceable except by a bona fide purchaser, assignee or pledgee for value or unless the violation is corrected as provided in Section 2984, and if the violation is not corrected the buyer may recover from the person to whom payment was made the amounts specified in Section 2983.

When a conditional sale contract is not enforceable under Sections 2983 or 2983.1, the buyer may elect to retain the motor vehicle and continue the contract in force or may, with reasonable diligence, elect to rescind the contract and return the motor vehicle. The value of the motor vehicle so returned shall be credited as restitution by the buyer without any decrease which results from the passage of time in the cash price of the motor vehicle as such price appears on the conditional sale contract. (Added Stats. 1961, c. 1626, p. 3538, § 4, effective Jan. 1, 1962.)

§ 2983.2 *Notice of intent to sell repossessed motor vehicles; form; prerequisite to liability for delinquency*

Any provision in any conditional sale contract for the sale of a motor vehicle to the contrary notwithstanding, at least five days' written notice of intent to sell a repossessed motor vehicle must be given to all persons liable on the contract. The notice shall be given in person or shall be sent by mail directed to the address of the persons shown on the contract, unless such persons have notified the holder in writing of a different address. The notice shall set forth that there is a right to redeem the motor vehicle and the total amount required as of the date of the notice to redeem; may inform such persons of their privilege of reinstatement of the contract, if the holder extends such privilege; shall give notice of the holder's intent to resell the motor vehicle at the expiration of five days from the date of giving or mailing the notice, or if given by mail and either the place of deposit in the mail or the place of address is outside of this state, the period of notice shall be 10 days instead of five days; shall disclose the place at which the motor vehicle will be returned to the buyer upon redemption or reinstatement; and shall designate the name and address of the person to whom payment shall be made. During the period provided under said notice, the person or persons liable on the contract may pay in full the indebtedness evidenced by the contract. Such persons shall be liable for any deficiency after sale of the repossessed motor vehicle only if the notice prescribed by this section is given within 60 days of repossession and includes the following:

1. A notice, in at least eight-point bold type if the notice is printed, reading as follows: "Notice: You are subject to suit and liability if the amount obtained upon sale of the vehicle is insufficient to pay the contract balance and any other amounts due."

2. An itemization of the contract balance and of any delinquency, collection or repossession costs and fees. In addition, the notice shall either set forth the computation or estimate of the amount of any credit for unearned finance charges or canceled insurance as of the date or the notice or shall state that such a credit may be available against the amount due. (Added Stats. 1961, c. 1626, p. 3538, § 4, as amended Stats. 1965, c. 804, p. 2400, § 1.)

Section 2 of Stats. 1965, c. 804, p. 2400, provided: "Section 2983.2, as amended in the 1965 Regular Session of the Legislature shall be operative on March 15, 1966, however, a notice given prior thereto pursuant to its provisions shall be effective in all respects."

§ 2983. *Default as prerequisite to repossession or acceleration of maturity*

In the absence of default by the buyer in the performance of any of his obligations under the contract, the holder may not accelerate the maturity of any part or all of the amount owing thereunder or repossess the motor vehicle. (Added Stats. 1961, c. 1626, p. 3539, § 4, effective Jan. 1, 1962.)

§ 2983.4 *Prevailing party's right to attorney's fees and costs*

Reasonable attorney's fees and costs shall be awarded to the prevailing party in any action on a conditional sale contract subject to the provisions of this chapter regardless of whether the action is instituted by the seller, holder or buyer. Where the defendant alleges in his answer that he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court, for the plaintiff, the amount so tendered, and the allegation is found to be true, then the defendant is deemed to be a prevailing party within the meaning of this section. (Added Stats. 1961, c. 1626, p. 3539, § 4, effective Jan. 1, 1962.)

§ 2983.5 *Cutting off right of action or defense by assignment; notice of assignment; necessity and form*

No right of action or defense arising out of a conditional sale contract which the buyer has against the seller, and which would be cut off by assignment, shall be cut off by assignment to any third party whether or not he acquires the contract in good faith and for value unless the assignee gives notice of the assignment to the buyer as provided in this section and within 15 days of the mailing of notice receives no written notice of the facts giving rise to the claim or defense of the buyer. A notice of assignment shall be in writing addressed to the buyer at the address shown on the contract and shall identify the contract and inform the buyer that he must, within 15 days of the date of mailing of the notice, notify the assignee in writing of any facts giving rise to a claim or defense which he may have. The notice of assignment shall state the name of the seller and buyer, a description of the motor vehicle, the contract balance and the number and amount of the installments. Nothing contained in this section shall be construed as modifying or restricting rights, equities or defenses afforded under Section 1459 of this code or Section 368 of the Code of Civil Procedure with respect to transactions regulated by this chapter. (Added Stats. 1961, c. 1626, p. 3539, § 4, as amended Stats. 1965, c. 327, p. 1436, § 1.)

§ 2984. *Correction of contract to comply with chapter*

Any failure to comply with any provision of this chapter (commencing with Section 2981) may be corrected by the holder, provided, however, that a willful violation may not be corrected unless it is a violation appearing on the face of the contract and is corrected within 30 days of the execution of the contract or within 20 days of its sale, assignment or pledge, whichever is later, provided that the 20-day period shall commence with the initial sale, assignment or pledge of the contract, and provided that any other violation appearing on the face of the contract may be corrected only within such time periods. A correction which will increase the amount of the contract balance or the amount of any installment as such amounts appear on the conditional sale contract shall not be effective unless the buyer concurs in writing to the correction. If notified in writing by the buyer of such a failure to comply with any provision of this chapter, the correction shall be made within 10 days of notice. Where any provision of a conditional sale contract fails to comply with any provision of this chapter, the correction shall be made by mailing or delivering a corrected copy of the contract to the buyer. Any amount improperly collected by the holder from the buyer shall be credited against the indebtedness evidenced by the contract or returned to the buyer. A violation corrected as provided in this section shall not be the basis of any recovery by the buyer or affect the enforceability of the contract by the holder and shall not be deemed to be a substantive change in the agreement of the parties. (Added Stats. 1961, c. 1626, p. 3539, § 4, as amended Stats. 1963, c. 838, p. 2037, § 1.)

§ 2984.1 *Contract provision regarding insurance coverage*

After July 1, 1966, every conditional sale contract shall contain a statement in contrasting red print in at least eight-point bold type if the contract is printed, which statement shall satisfy the requirements of Section 5604 of the Vehicle Code, as follows:

"Warning—Unless a charge is included in this agreement for public liability or property damage insurance, payment for such coverage is not provided by this agreement."

After October 1, 1965, no person shall print for use as a conditional sale contract form, any form which does not comply with this section. (Added Stats. 1961, c. 1626, p. 3540, § 4, as amended Stats. 1965, c. 666, p. 2042, § 1.)

§ 2984.2 *Enforceability of provision for inclusion of title to or lien on other property*

No agreement in connection with a conditional sale of a motor vehicle for the inclusion of title to or a lien upon any personal or real property, other than the motor vehicle which is the subject matter of the conditional sale, or accessories therefor or special and auxiliary equipment used in connection therewith, or in substitution, in whole or in part, for any therefor, as security for payment of the contract balance, shall be enforceable. (Added Stats. 1961, c. 1626, p. 3540, § 4, effective Jan. 1, 1962.)

§ 2984.3 *Buyer's acknowledgment of delivery of copy of contract; presumptions*

Any acknowledgment by the buyer of delivery of a copy of a conditional sale contract shall be printed or written in a size equal to at least 10-point bold type and, if contained in the contract, shall appear directly above the space reserved for the buyer's signature. The buyer's written acknowledgment, conforming to the requirements of this section, of delivery of a completely filled-in copy of the contract, shall be a rebuttable presumption of delivery in any action or proceeding by or against a third party without knowledge to the contrary when he acquired his interest in the contract. If either a copy of the contract or a notice containing items 1 to 8 of subdivision (a) of Section 2982 of this code is furnished the buyer, and the buyer fails to notify the holder of the contract in writing within 30 days that he was not furnished a copy of the contract as required by this chapter, it shall be conclusively presumed in favor of such a third party that a copy was furnished as required by this chapter. (Added Stats. 1961, c. 1626, p. 3540, § 4, effective Jan. 1, 1962.)

CHAPTER 2c. REAL PROPERTY SALES CONTRACTS [NEW]

Sec.
2985. Definition.
2985.1 Transferability.
2985.2 Encumbering realty sold under unrecorded sales contract in amount due under contract without consent; misdemeanor.
2985.3 Appropriation by seller of payment by buyer when payment by seller on obligation secured by encumbrance on realty due; misdemeanor.
2985.4 Holding pro rata payments for insurance and taxes in trust; applicability of section.
2985.5 Required contents of sales contracts; number of years required to complete payments; basis for tax estimate [New].

Chapter 2c added by Stats. 1961, c. 886, p. 2343, § 30.

§ 2985. *Definition*

A real property sales contract is an agreement wherein one party agrees to convey title to real property to another party upon the satisfaction of specified conditions set forth in the contract and which does not require conveyance of title within one year from the date of formation of the contract. (Added Stats. 1961, c. 886, p. 2343, § 30, as amended Stats. 1963, c. 560, p. 1442, § 6.)

§ 2985.1 *Transferability*

A real property sales contract may not be transferred by the fee owner of the real property unless accompanied by a transfer of the real property which is the subject of the contract, and real property may not be transferred by the fee owner thereof unless accompanied by an assignment of the contract.

CALIFORNIA CODE OF CIVIL PROCEDURE

Exemptions—Section 690, et seq.

Sections 690.11
690.26

§ 690.9 *Exemptions; poultry*

Poultry not exceeding in value seventy-five dollars. (Added Stats. 1935, c. 723, p. 1968, § 9.)

CROSS REFERENCES

Poultry, definition of, see Agricultural Code § 379.1.
Property of value greater than exempted under this section, creditor's counter-affidavit, see § 690.26, subd. (4).

§ 690.10 *Exemptions; wages and earnings of seamen, seagoing fishermen and sealers; exceptions*

The wages and earnings of all seamen, seagoing fishermen and sealers, not exceeding three hundred dollars, regardless of where or when earned, and in addition to all other exemptions otherwise provided by any law; but where debts are incurred by any such person, or his wife or family for the common necessaries of life, or incurred for personal services rendered by any employee, or former employee, or if at the time of the attachment or execution the debtor has no family residing in this State supported in whole or in part by his labor, one-half of such earnings about mentioned is nevertheless subject to execution, garnishment or attachment to satisfy debts so incurred. (Added States. 1935, c. 723, p. 1968, § 10.)

CROSS REFERENCES

Attachment or arrestment of wages, see 46 U.S.C.A. § 601.
Seamen defined, see Harbors and Navigation Code § 861.
Wages, definition of, See Government Code § 18539, Labor Code § 200 et seq.
Waiver of wages not allowed, see Harbors and Navigation Code § 864.

§ 690.11 *Exemptions; earnings; restrictions; affidavit*

One-half of the earnings of the defendant or judgment debtor received for his personal services rendered at any time within 30 days next preceding the levy of attachment or execution shall be exempt from execution or attachment without filling a claim for exemption as provided in Section 690.26.

All of such earnings, if necessary for the use of the debtor's family, residing in this State, and supported in whole or in part by such debtor unless the debts are: (a) incurred by such debtor, his wife or family, for the common necessaries of life; or, (b) incurred for personal services rendered by any employee, or former employee, of such debtor.

Prior to causing any levy of attachment on earnings of the defendant received for his personal services, the plaintiff shall file with the levying officer an affidavit that the defendant whose earnings are to be attached has been served with a copy of the summons and of the complaint or that the defendant has been given notice pursuant to Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of this code that a writ of attachment on his earnings will issue after eight days from the date of such notice. Such notice shall only be required on the first writ of attachment on earnings. (Added Stats. 1935, c. 723, p. 1968, § 11. As amended Stats. 1937, c. 578, p. 1623, § 1; Stats. 1945, c. 822, p. 1515, § 1; Stats. 1955, c. 793, p. 1393, § 3; Stats. 1963, c. 1540, p. 3124, § 1.)

CROSS REFERENCES

Affidavit for attachment of earnings in action to collect a debt for common necessaries of life, see § 538.
Husband and wife, liability for debts, see Civil Code § 168 et seq.
Immediate release of half of earnings, see § 690.26.
Wages, definition of, see Government Code § 18539; Labor Code § 200 et seq.

§ 690.12 *Repealed. Stats. 1965, c. 1363, c. 3255, § 1*

§ 690.13 *Exemptions; nautical instruments and wearing apparel of master, officer, or seaman*

All the nautical instruments and wearing apparel of any master, officer, or seaman of any steamer or other vessel. (Added Stats. 1935, c. 723, p. 1969, § 13.)

CROSS REFERENCES

Seamen, definition of, see Harbors and Navigation Code § 861.
Steam vessel, definition of, see Harbors and Navigation Code § 22.

§ 690.14 *Exemptions; fire company equipment, etc.*

All fire engines, hooks and ladders, with the carts, trucks and carriages, hose buckets, implements, and apparatus thereunto appertaining, and all furniture

and uniforms of any fire company or department organized under the laws of this State. (Added Stats. 1935, c. 723, p. 1969, § 14.)

§ 690.15 *Exemptions; arms, uniforms and accouterments; one gun*

All arms, uniforms, and accounterments required by law to be kept by any person, and also one gun, to be selected by the debtor. (Added Stats. 1935, c. 723, p. 1969, § 15.)

§ 690.235 *Exemptions; funds of persons confined in prison or other correctional facility; amount*

The funds of any person confined in any prison or facility under the jurisdiction of the Department of Corrections or the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for him, or to his credit, in an inmate's trust account or similar account by the State, county, or city, or any agency thereof, not to exceed the sum of forty dollars ($40), shall be exempt from attachment or execution without filing a claim for exemption as provided in Section 690.26. (Added Stats. 1959, c. 339, p. 2265, § 1.)

§ 690.24 *Exemptions; motor vehicle; house trailer*

One motor vehicle of a value not exceeding three hundred fifty dollars ($350). One house trailer actually occupied by debtor and his family of a value not exceeding two thousand five hundred dollars ($2,500). (Added Stats. 1935, c. 723, p. 1971, § 24. As amended Stats. 1949, c. 628, p. 1124, § 1; Stats. 1951, c. 1094, p. 2833, § 1; Stats. 1959, c. 1474, p. 3771, § 1.)

CROSS REFERENCES

Motor vehicle defined, see Vehicle Code § 415.

Property of value greater than exempted under this section, creditor's counter-affidavit, see § 690.26, subd. (4).

§ 690.25 *Exemptions; fraternal organization funds for sick or unemployment benefits*

All moneys belonging to a fraternal organization not exceeding the sum of five hundred dollars, and which moneys are used exclusively in the payment of sick or unemployment benefits to bona fide members of such fraternal organizations, are exempt from execution or attachment. (Added Stats. 1939, c. 728, p. 2257, § 1.)

CROSS REFERENCES

Fraternal Benefit Societies, see Insurance Code § 10970 et seq.

§ 690.26 *Exemptions; affidavits and counter-affidavits; release; hearing; custody and disposition of property; appeal*

(1) *Affidavit of exemption.* If the property mentioned in Sections 690.1 to 690.25, inclusive, shall be levied upon under writ of attachment or execution, the defendant or judgment debtor (herein referred to as "the debtor"), in order to avail himself of his exemption rights as to such property, shall deliver to the levying officer an affidavit of himself or his agent, together with a copy thereof, alleging that the property levied upon, identifying it, is exempt, specifying the section or sections of this code on which he relies for his claim to exemption, and all facts necessary to support his claim, and also stating therein his address within this State for the purpose of permitting service by mail upon him of the counter-affidavit and any notice of the motion herein provided.

(2) *Creditor, service of affidavit and notice.* Forthwith upon receiving the affidavit of exemption the levying officer shall serve upon the plaintiff or the person in whose favor the writ runs (herein referred to as "the creditor"), either personally or by mail, a copy of the affidavit of exemption, together with a writing, signed by the levying officer, stating that the claim to exemption has been received and that the officer will release the property unless he receives from the creditor a counteraffidavit within five days after service of such writing.

(3) *Counter-affidavit.* If the creditor desires to contest the claim to exemption, he shall within such period of five days, file with the levying officer a counter-

affidavit alleging that the property is not exempt within the meaning of the section or sections relied upon, or if the claim to exemption be based on Sections 690.1, 690.3, 690.6, 690.8, 690.9, 690.12, 690.17, 690.18, 690.21, 690.24, alleging that the value of the property claimed to be exempt is in excess of the value stated in the applicable section or sections, together with proof of service of a copy of such counteraffidavit upon the debtor.

(4) *Counter-affidavit, release for failure to file.* If no such counteraffidavit, with such proof of service, is so filed with the levying officer within the time allowed, the officer shall forthwith release the property.

(5) *Hearing, right, motion, time, notice.* If such counteraffidavit, with such proof of service, is so filed, either the creditor or the debtor shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of detremining the claim to exemption, or the value of the property claimed to be exempt. Such hearing must be granted by the court upon motion of either party made within five days after the counteraffidavit is filed with the levying officer, and such hearing must be had within 15 days from the date of the making of such motion unless continued by the court for good cause. The party making the motion for hearing must give not less than five days' notice in writing of such hearing to the levying officer and to the other party and specify therein that the hearing is for the purpose of determining the claim to exemption. The notice may be of motion or of hearing and upon the filing of the notice with the clerk of court, the motion is deemed made.

(6) *Hearing, release for failure to request.* If neither party makes such motion within the time allowed, or if the levying officer shall not have been served with a copy of the notice of hearing within 10 days after the filing of the counteraffidavit, the levying officer shall forthwith release the property to the debtor.

(7) *Orders pending hearing, sale of perishable property.* At any time while the proceedings are pending, upon motion of either party or upon its own motion, the court may (a) order the sale of any perishable property held by such officer and direct disposition of the proceeds of such sale; and (b) make such other orders as may be proper under the particular circumstances of the case. Any orders so made may be modified or vacated by the court or judge granting the same, or by the court in which the proceedings are pending, at any time during the pendency of the proceedings, upon such terms as may be just.

(8) *Possession pending hearing.* The levying officer in all cases shall retain physical possession of the property levied upon if it be capable of physical possession, or in the case of property not capable of physical possession, the levy shall remain in full force and effect, pending the final determination of the claim to exemption; provided, however, that no sale under execution shall be had prior to such final determination unless an order of the court hearing the claim for exemption shall so provide.

(9) *Procedure, pleadings, evidence and judgment.* At such hearing, the party claiming the exemption shall have the burden of proof. The affidavits and counteraffidavits shall be filed by the levying officer with the court and shall constitute the pleadings, subject to the power of the court to permit an amendment in the interests of justice. The affidavit of exemption shall be deemed controverted by the counter-affidavit and both shall be received in evidence. Nothing herein contained shall be construed to deprive anybody of the right to a jury trial in any case where by the Constitution such right is given, but a jury trial shall be waived in any such case in like manner as in the trial of an action. No findings shall be required in a proceeding under this section. When the hearing is before the court sitting without a jury, and no evidence other than the affidavit and counteraffidavit is offered, the court if satisfied that sufficient facts are shown thereby, may make its determination thereon; otherwise, it shall order the hearing continued for the production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits. At the conclusion of the hearing, the court shall give judgment determining whether the claim to exemption shall be allowed or not, in whole or in part, which judgment shall be determinative as to the right of the creditor to have the property taken and held by the officer or to subject the property to payment or other satisfaction of his judgment. In such judgment the court shall make all proper orders for the disposition of such property or the proceeds thereof.

(10) *Judgment, transmittal to levying officer, effect.* A copy of any judgment entered in the trial court shall be forthwith transmitted by the clerk to the levying officer in order to permit such officer to either release the property attached or to continue to hold it or sell it, in accordance with the provisions of the writ previously delivered to him. Such officer, unless an appeal from the judgment be waived, or the judgment has otherwise become final, shall continue to hold such property under attachment or execution, continuing the sale of any property held under execution until such judgment becomes final; provided, however, that if a claim to exemption under Section 690.11 be allowed by such judgment, the debtor shall be entitled to a release of the earnings so exempted at the expiration of three days, unless otherwise ordered by the court or unless the levying officer shall have been served with a copy of a notice of appeal from the judgment.

(11) *Service by mail.* When any documents required hereunder are served by mail, the provisions of this code relating to service by mail shall be applicable thereto.

(12) *Notice of extension of time.* Whenever the time allowed for an act to be done hereunder is extended by the court, written notice thereof shall be given promptly to the opposing party, unless such notice be waived, and to the levying officer.

(13) *Appeals.* An appeal lies from any judgment under this section; such appeal to be taken in the manner provided for appeals in the court in which the proceeding is had. (Added Stats. 1945, c. 714, p. 1394, § 2. As amended Stats. 1949, c. 369, p. 646, § 2; Stats. 1951, c. 1094, p. 2833, § 2; Stats. 1953, c. 840, p. 2161, § 1; Stats. 1955, c. 793, p. 1393, § 4; Stats. 1955, c. 1376, p. 2468, § 1; Stats. 1957, c. 496, p. 1529, § 2.)

CROSS REFERENCES

Affidavit defined, see § 2003.
Amendment of pleadings, see § 472 et seq.
Claim of exemption, see §§ 690–690.25.
Levy by officers, see §§ 682, 688, 691.
Motion, notice and service of, see §§ 1005, 1010, 1011.
Pleadings generally, see § 420 et seq.
Sale of perishable property, see § 692.
Verification, use of affidavit for, see § 2009.

CALIFORNIA CIVIL CODE

Credit Sales—Section 1801 et seq.

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CIVIL CODE

TITLE 2. CREDIT SALES [NEW]

Chapter Section
1. Retail Installment Sales ---------- 1801

Title 2. added by Stats. 1959, c. 201, p. 2092, § 1, operative Jan. 1, 1960

Provisions of this title as not affecting validity of any agreement made prior to effective date of act, see note under § 1801,

CHAPTER 1. RETAIL INSTALLMENT SALES

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Chapter 1 added by Stats. 1959, c. 201, p. 2092, § 1, operative Jan. 1, 1960

ARTICLE 1. GENERAL PROVISIONS

Sec.

1801. Citation.
1801.1 Waiver of provisions.
1801.2 Partial invalidity.
1801.3 Applicability of provisions.

Article 1 added by Stats. 1959, c. 201, p. 2092, § 1, operative Jan. 1, 1960

§ 1801. *Citation*

This chapter may be cited as the "Unruh Act." (Added Stats. 1959, c. 201, p. 2092, § 1.)

Section 2 of Stats. 1959, c. 201, p. 2108, which made the act operative January 1, 1960, also provided that Title 2 of Part 4, Division 3, added by the act, should not affect the validity of any agreement made prior to the effective date of the act.

§ 1801.1 *Waiver of provisions*

Any waiver by the buyer of the provisions of this chapter shall be deemed contrary to public policy and shall be unenforceable and void. (Added Stats. 1959, c. 201, p. 2092, § 1, as amended Stats. 1963, c. 1603, p. 3181, § 1.)

§ 1802.13 *Holder*

"Holder" means the retail seller who acquires a retail installment contract or installment account executed, incurred or entered into by a retail buyer, or if the contract or installment account is purchased by a financing agency or other assignee, the financing agency or other assignee. The term does not include the pledgee of or the holder of a security interest in an aggregate number of such contracts or installment accounts to secure a bona fide loan thereon. (Added Stats. 1959, c. 201, p. 2094, § 1.)

§ 1802.14 *Official fees*

"Official fees" means the fees required by law and actually to be paid to the appropriate public officer to perfect a lien or other security interest, on or in goods, retained or taken by a seller under a retail installment contract or installment account. (Added Stats. 1959, c. 201, p. 2094, § 1.)

§ 1802.15 *Person*

"Person" means an individual, partnership, corporation, association or other group, however organized. (Added Stats. 1959, c. 201, p. 2094, § 1.)

§ 1802.16 *Financing agency*

"Financing agency" means a person engaged in this State in whole or in part in the business of purchasing retail installment contracts, or installment accounts from one or more retail sellers. The term includes but is not limited to a bank, trust company, private banker, or investment company, if so engaged. (Added Stats. 1959, c. 201, p. 2094, § 1.)

ARTICLE 3. PROVISIONS OF RETAIL INSTALLMENT CONTRACTS

Sec.
1803.1 Date; writing; size of type.
1803.2 Single document; contents.
1803.3 Contract; contents.
1803.4 Obtaining signature of buyer to contract containing blank spaces.
1803.5 Cost of insurance included in contract and separate charge made by buyer.
1803.6 Delinquency charges; costs of collection.
1803.7 Delivery of copy of completed contract to buyer; acknowledgment of delivery; conclusive presumption.
1803.8 Negotiation of sales by mail or telephone.
1803.9 Cash sale of $50 or less [New].

Article 3 added by Stats. 1959, c. 201, p. 2094, § 1, operative Jan. 1, 1960

§1803.1 *Date; writing; size of type*

A retail installment contract shall be dated and in writing; the printed portion thereof shall be in at least eight-point type. (Added Stats.1959, c. 201, p. 2094, § 1.)

§ 1803.2 *Single document; contents*

Except as provided in Sections 1803.9 and 1808.3, every retail installment contract shall be contained in a single document which shall contain:

(a) The entire agreement of the parties with respect to the cost and terms of payment for the goods and services, including any promissory notes or any other evidences of indebtedness between the parties relating to the transaction, and including any promise, whether made in writing or orally, by the seller, made as an inducement to the buyer to become a party to the contract or which is part of the contract or which is made incidental to negotiations between the seller and he buyer with respect to the sale of the goods or services that are the subject of the contract that the seller will compensate the buyer for referring customers or prospective customers to the seller for goods or services which the seller has for sale or for referring the seller to such customers or prospective customers. In any case in which, pursuant to the preceding provisions, the contract contains a promise to compensate the buyer for referring customers or prospective customers to the seller or the seller to such customers, the contract must contain a provision to the effect that the amount otherwise owing under the contract at any time is reduced by the amount of compensation owing pursuant to such promise.

(b) Either at the top of the contract or directly above the space reserved for the signature of the buyer, the words "Security Agreement" or "Lien Contract," as the case may be, shall appear in at least 10-point bold type where a security interest in the goods is retained or a lien on other goods or realty is obtained by the seller as security for the goods or services purchased. Either at the top of the contract or directly above the space reserved for the signature of the buyer, the words "Retail Installment Contract" shall appear in at least 10-point bold type where security is not obtained by the seller for the goods or services purchased.

(c) A notice in at least eight-point bold type reading as follows: "Notice to the buyer: (1) Do not sign this agreement before you read it or if it contains any blank space. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the service charge." (Added Stats. 1959, c. 201, p. 2094, § 1, as amended Stats. 1961, c. 1214, p. 2949, § 2; Stats. 1963, c. 819, p. 1998, § 7, effective Jan. 1, 1965; Stats. 1963, c. 1603, p. 3181, § 3.)

Stats. 1963, c. 819, p. 1849, amending this section, enacted the Uniform Commercial Code to become effective January 1, 1965, except as to certain contracts validly entered into before the effective date of the act and to the rights, duties and interests flowing therefrom (Commercial Code §§ 10101, 10102).

The amendment by Stats. 1963, c. 1603, p. 3181, § 3, added the reference to rity agreement" for "conditional sale contract," and deleted former final sentence from subd. (b) which read: "The requirements of this subdivision shall be in addition to any applicable designation required of a chattel mortgage by Civil Code Sections 2956 and 2957."

The amendment by Stats. 1963, c. 1603, p. 3181, § 3, added the reference to Section 1803.9 to the exception in the introductory clause, and incorporated the changes made by Stats. 1963, c. 819, p. 1998, § 7.

§ 1803.3 *Contract; contents*

Except as provided in Article 8 of this chapter, a contract shall contain the following:

(a) The names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the goods or services sufficient to identify them. Services or multiple items of goods may be described in general terms and may be described in detail sufficient to identify them in a separate writing.

(b) The cash sale price of the goods, services and accessories which are the subject matter of the retail installment sale.

(c) The amount of the buyer's down payment, itemizing the amounts paid in money and in goods and containing a brief description of the goods, if any, traded in.

(d) The difference between item (b) and item (c).

(e) The amount, if any, included for insurance, specifying the coverages and the cost of each type of coverage.

(f) The amount, if any, of official fees.

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

(h) The amount of the service charge, if any.

(i) The time balance, which is the sum of items (g) and (h), payable by the buyer to the seller, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.

(j) The time sale price.

The items need not be stated in the sequence or order set forth above; additional items may be included to explain the computations made in determining the amount to be paid by the buyer. (Added Stats. 1959, c. 201, p. 2095, § 1.)

§ 1803.4 *Obtaining signature of buyer to contract containing blank spaces*

The seller shall not obtain the signature of the buyer to a contract when it contains blank spaces to be filled in after it has been signed (Added Stats. 1959, c. 201, p. 2096, § 1.)

§ 1803.5 *Cost of insurance included in contract and separate charges made to buyer*

If the cost of any insurance is included in the contract and a separate charge is made to the buyer for such insurance:

(a) The contract shall state whether the insurance is to be procured by the buyer or the seller.

(b) The amount, included for such insurance, shall not exceed the premiums chargeable in accordance with rate fixed for such insurance by the insurer.

(c) If the insurance is to be procured by the seller or holder, he shall within 45 days after delivery of the good 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.

(d) The provisions of Insurance Code Section 1668 shall apply to any violation of this section. (Added Stats. 1959, c. 201, p. 2096, § 1.)

§ 1803.6 *Delinquency charges; costs of collection*

A contract may provide for the payment by the buyer of a delinquency charge on each installment in default for a period of not less than 10 days in an amount not in excess of 5 percent of such installment or five dollars ($5), whichever is less, but a minimum charge of one dollar ($1) may be made. Only one such delinquency charge may be collected on any such installment regardless of the period during which it remains in default. The contract may also provide for payment of any actual and reasonable costs of collection occasioned by removal of the goods from the State without written permission of the holder, or by the failure of the buyer to notify the holder of any change of residence, or by the failure of the buyer to communicate with the holder for a period of 45 days after any default in making payments due under the contract. (Added Stats. 1959, c. 201, p. 2096, § 1.)

§ 1803.7 *Delivery of copy of completed contract to buyer; acknowledgment of delivery; conclusive presumption*

The seller shall deliver to the buyer, or mail to him, at his address shown on the contract, a legible copy thereof completed in accordance with the provisions of this chapter. Until the seller does so, the buyer shall be obligated to pay only

the cash sale price. Any acknowledgment by the buyer of delivery of a copy of the contract shall be printed or written in a size equal to at least 10-point bold type and, if contained in the contract shall also appear directly above the space reserved for the buyer's signature. The buyer's written acknowledgment, conforming to the requirements of this section of delivery of a copy of a contract shall be a rebuttable presumption of such delivery and of compliance with this section and Section 1803.4, in any action or proceeding by or against an assignee of the contract without knowledge to the contrary when he purchases the contract. If the holder furnishes the buyer a copy of the contract, or a notice containing the items required by Section 1803.3 and stating that the buyer should notify the holder in writing within 30 days if he was not furnished a copy of the contract, and no such notification is given, it shall be conclusively presumed in favor of the third party that a copy was furnished as required by Sections 1803.4 and 1803.7. (Added Stats. 1959, c. 201, p. 2096, § 1, as amended Stats. 1961, c. 1214, p. 2950, § 3.)

§ 1803.8 *Negotiation of sales by mail or telephone*

Retail installment sales negotiated and entered into by mail or telephone without personal solicitation by a salesman or other representative of the seller, where the seller's cash and deferred payment prices and other terms are clearly set forth in a catalog or other printed solicitation of business which is generally available to the public, may be made as hereinafter provided. All of the provisions of this chapter shall apply to such sales except that the seller shall not be required to deliver a copy of the contract to the buyer as provided in Section 1803.7, and if, when the proposed retail installment sale contract is received by the seller from the buyer, there are blank spaces to be filled in, the seller may insert in the appropriate blank spaces the amounts of money and other terms which are set forth in the seller's catalog which is then in effect. In lieu of the copy of the contract provided for in Section 1803.7 the seller shall, within 15 days from the date of shipment of goods, furnish to the buyer a written statement of the items inserted in such blank spaces. (Add Stats. 1959, c. 201. p. 2097, § 1.)

§ 1803.9 *Cash sale of $50 or less*

If a retail installment sale is a sale of goods or services for a cash sale price of fifty dollars (50) or less, then the retail installment contract need not be contained in a single document. If the contract is contained in more than one document, one such document shall be 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 Section 1803.3 and shall constitute a separate 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 Section 1808.3. (Added Stats. 1963, c. 1603, p. 3182, § 4.)

ARTICLE 4. RESTRICTIONS ON RETAIL INSTALLMENT CONTRACTS

Sec.

1804.1 Prohibited provisions.
1804.2 Assignment of contract.
1804.3 Lien on goods fully paid for or not sold by seller.
1804.4 Invalidity of prohibited provisions; effect upon contract.

Article 4 added by Stats. 1959, c. 201, p. 2097, § 1, operative Jan. 1, 1960

§ 1804.1 *Prohibited provisions*

No contract or obligation shall contain any provision by which:

(a) The buyer agrees not to assert against a seller a claim or defense arising out of the sale or agrees not to assert against an assignee such a claim or defense other than as provided in Section 1804.2.

(b) In the absence of the buyer's default in the performance of any of his obligations, the holder may accelerate the maturity of any part or all of the amount owing thereunder.

(c) A power of attorney is given to confess judgment in this state, or an assignment of wages is given; provided, that nothing herein contained shall prohibit the giving of an assignment of wages contained in a separate instrument, executed pursuant to Section 300 of the Labor Code.

(d) The seller or holder of the contract or other person acting on his behalf is given authority to enter upon the buyer's premises unlawfully or to commit any breach of the peace in the repossession of goods.

(e) The buyer waives any right of action against the seller or holder of the contract or other person acting on his behalf, for any illegal act committed in the collection of payments under the contract or in the repossession of goods.

(f) The buyer executes a power of attorney appointing the seller or holder of the contract, or other person acting on his behalf, as the buyer's agent in collection of payments under the contract or in the repossession of goods.

(g) The buyer relieves the seller from liability for any legal remedies which the buyer may have against the seller under the contract or any separate instrument executed in connection therewith.

(h) The buyer agrees to the payment of any charge by reason of the exercise of his right to rescind or void the contract.

(i) The seller or holder of the contract is given the right to commence an action on a contract under the provisions of this chapter in a county other than the county in which the contract was in fact signed by the buyer, the county in which the buyer resides at the commencement of the action, the county in which the buyer resided at the time that the contract was entered into, or in the county in which the goods purchased pursuant to such contract have been so affixed to real property as to become a part of such real property. (Added Stats. 1959, c. 201, p. 2097, § 1, as amended Stats. 1961, c. 1214, p. 2950, § 4; Stats. 1963, c. 1310, p. 2833, § 1; Stats. 1965, c. 776, p. 2361, § 1.)

§ 1804.2 *Assignment of contract*

No right of action or defense arising out of a retail installment sale which the buyer has against the seller, other than as provided in Section 1812.7, and which would be cut off by assignment, shall be cut off by assignment of the contract to any third party whether or not he acquires the contract in good faith and for value unless the assignee gives notice of the assignment to the buyer as provided in this section, and within 15 days of the mailing of such notice receives no written notice of the facts giving rise to the claim or defense of the buyer. A notice of assignment shall be in writing addressed to the buyer at the address shown on the contract and shall: identify the contract; state the name of the seller and buyer; describe the goods and/or services; state the time balance and the number and amounts of the installments. The notice of assignment shall contain the following warning to the buyer.

You have 15 days within which to notify us of any claims or defenses which you may have against the seller. If you have any complaints or objections to make, you should notify us at this time.

Nothing contained in this section shall be construed as modifying or restricting rights, equities or defenses afforded under Section 1459 of this code or Section 368 of the Code of Civil Procedure with respect to transactions regulated by this chapter. (Added Stats. 1959, c. 201, p. 2098, § 1, as amended Stats. 1961, c. 1214, p. 2951, § 5; Stats. 1963, c. 1602, p. 3180, § 1.)

Section 11 of Stats. 1961, c. 1214, p. 2953, provided: "Notwithstanding the amendment of Section 1804.2 enacted at the 1961 Regular Session of the Legislature, a notice of assignment made in the form and manner provided by the section prior to the amendment shall be valid and effective until July 1, 1962."

§ 1805.4 *Inclusive charge*

The service charge shall be inclusive of all charges incident to investigating and making the contract and for the extension of the credit provided for in the contract, and no fee, expense or other charge whatsoever shall be taken, received, reserved or contracted for except as otherwise provided in this chapter. (Added Stats. 1959, c. 201, p. 2098, § 1.)

§ 1805.5 *Splitting or dividing sales transactions*

No seller shall induce or permit any buyer to split up or divide any sales transaction for the purpose of contracting for or receiving a higher rate of time

price differential than would otherwise be permitted by this article or to obtain the exemption permitted by Section 1801.3 of this chapter. (Added Stats. 1959, c. 201, p. 2099, § 1.)

ARTICLE 6. PAYMENTS

Sec.

1806.1 Payment to last known holder of contract or installment account; discharge of obligation.
1806.2 Statement of unpaid balance.
1806.3 Payment before maturity; refund credit.
1806.4 Acknowledgement of payments; release of security.

Article 6 added by Stats. 1599, c. 201, p. 2099, § 1, operative Jan. 1, 1960

§ 1806.1 *Payment to last known holder of contract or installment account; discharge of obligation*

Unless the buyer has notice or actual or intended assignment of a contract or installment account, payment thereunder made by the buyer to the last known holder of such contract or installment account, shall to the extent of the payment, discharge the buyer's obligation. (Added Stats. 1959, c. 201, p. 2099, § 1.)

§ 1806.2 *Statement of unpaid balance*

At any time after its execution, but not later than one year after the last payment thereunder, the holder of a contract shall, upon written request of the buyer made in good faith, promptly give or forward to the buyer a detailed written statement which will state with accuracy the total amount, if any, unpaid thereunder. Such a statement shall be supplied by the holder once each year without charge; if any additional statement is requested by the buyer, the holder shall supply such statement to the buyer at a charge not exceeding one dollar ($1) for each additional statement supplied to the buyer. The provisions of this section shall not apply to those transactions wherein, instead of periodic statements of account, the buyer is provided with a passbook or payment book in which all payments, credits, charges and the unpaid balance is entered. (Added Stats. 1959, c. 201, p. 2099, § 1.)

§ 1806.3 *Payment before maturity; refund credit*

Notwithstanding the provisions of any contract to the contrary, any buyer may pay the contract in full at any time before maturity and in so pay- * * *

(d) The service charge may be computed on a schedule of fixed amounts if as so computed it is applied to all amounts of outstanding balances equal to the fixed amount minus a differential of not more than five dollars ($5), provided that it is also applied to all amounts of outstanding balances equal to the fixed amount plus at least the same differential. (Added Stats. 1959, c. 201, p. 2104, § 1.)

§ 1810.5 *Monthly statement; contents*

The seller or holder of a retail installment account shall promptly provide the buyer with a statement as of the end of each monthly period (which need not be a calendar month) setting forth the following:

(a) The balance due to the seller or holder from the buyer at the beginning of the monthly period.

(b) The dollar amount of each purchase by the buyer during the monthly period and, (unless a sales slip or memorandum of each purchase has previously been furnished the buyer or is attached to the statement) the purchase or posting date, a brief description and the cash price of each purchase.

(c) The payments made by the buyer to the seller or holder and any other credits to the buyer during the monthly period.

(d) The amount of the service charge.

(e) The total balance in the account at the end of the monthly period.

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

The items need not be stated in the sequence or order set forth above; additional items may be included to explain the computations made in determining the amount to be paid by the buyer. (Added Stats. 1959, c. 201, p. 2104, § 1.)

§ 1810.6 *Service charge as inclusive of all incidental charges; agreement for payment of attorney's fees and costs*

The service charge shall include all charges incident to investigating and making the retail installment account. No fee, expense, delinquency, collection or other charge whatsoever shall be taken, received, reserved or contracted by the seller or holder of a retail installment account except as provided in this section. A seller may, however, in an agreement which is signed by the buyer and of which a copy is given or furnished to the buyer provide for the payment of attorney's fees and costs in conformity with Article 11 of this chapter. (Added Stats. 1959, c. 201, p. 2105, § 1.)

§ 1810.7 *Cost of insurance separately charged to buyer; agreement*

If the cost of any insurance is to be separately charged to the buyer, there shall be an agreement to this effect, signed by both the buyer and the seller, a copy of which shall be given or furnished to the buyer. Such agreement shall state whether the insurance is to be procured by the buyer or the seller or holder. If the insurance is to be procured by the seller or holder, the seller or holder shall comply with the provisions of Section 1803.5. (Added Stats. 1959, c. 201, p. 2105, § 1.)

* * * * * * *

also be liable to him for all damages suffered because of such failure. (Added Stats. 1959, c. 201, p. 2106, § 1, as amended Stats. 1961, c. 1214, p. 2951, § 7; Stats. 1963, c. 1952, p. 4017, § 1.)

§ 1812.3 *Notice; contents; service*

The notice provided for in Section 1812.2 shall be given to the buyer and any other person liable by causing it to be delivered personally or to be deposited in the United States mail addressed to the buyer or to such other person at his last known address and shall advise the buyer or such other person of his right to redeem as provided for in Section 1812.2. If the holder determines to sell the goods at public sale he shall give notice of the time and place of sale at least 10 days before the date of sale by delivering a copy of the notice personally to the buyer or other person liable or depositing the same in the United States mail addressed to the buyer or such other person at his last known address. (Added Stats. 1959, c. 201, p. 2106, § 1, as amended Stats. 1961, c. 1214, p. 2952, § 8.)

§ 1812.4 *Application of proceeds of resale*

The proceeds of a resale shall be applied (1) to the payment of the expenses thereof. (2) to the payment of any expenses of retaking, including reasonable attorney's fees actually incurred, and of any expenses of keeping, storing, repairing, reconditioning or preparing the goods for sale to which the holder may be entitled, (3) to the satisfaction of the balance due under the contract. Any sum remaining after the satisfaction of such claims shall be paid to the buyer. (Added Stats. 1959, c. 201, p. 2107, § 1.)

§ 1812.5 *Recovery of deficiency prohibited*

If the proceeds of the sale are not sufficient to cover items (1), (2) and (3) of Section 1812.4, the holder may not recover the deficiency from the buyer or from anyone who has succeeded to the obligations of the buyer. (Added Stats. 1959, c. 201, p. 2107, § 1, as amended Stats. 1963, c. 1952, p. 4018, § 2.)

ARTICLE 12.2. PENALTIES

Sec.

1812.6 Violation; misdemeanor.
1812.7 Noncompliance with provisions as barring right of recovery; remedy of buyer.
1812.8 Correction of failure to comply with provisions.
1812.9 Willful violations; triple damages.

Article 12.2 added by Stats. 1959, c. 201, p. 2107, § 1, operative Jan. 1, 1960

§ 1812.6 *Violation; misdemeanor*

Any person who shall willfully violate any provision of this chapter shall be guilty of a misdemeanor. (Added Stats. 1959, c. 201, p. 2107, § 1.)

California Labor Code

CHAPTER 2. ASSIGNMENT OF WAGES

Sec.
300. Conditions of validity.
301–304. Repealed.

§ 300. *Conditions of validity.* No assignment of, or order for wages or salary, earned or to be earned, shall be valid unless:

(a) *Separate written instrument.* Such assignment is contained in a separate written instrument, signed by the person by whom the said wages or salary have been earned or are to be earned, and identifying specifically the transaction to which the assignment relates; and

(b) *Signature of spouse.* Where such assignment of, or order for wages or salary is made by a married person, the written consent of the husband or wife of the person making such assignment or order is attached to such assignment or order; and

(c) *Signature of parent or guardian.* Where such assignment or order for wages or salary is made by a minor, the written consent of a parent or guardian of such minor is attached to such order or assignment; and

(d) *Statement of facts.* Where such assignment of or order for wages or salary is made by a person who is unmarried or who is an adult or who is both unmarried and adult, a written statement by the person making such assignment or order, setting forth such facts, is attached to or included in such assignment or order;

(e) *Statement of age and marital status.* No other assignment or order exists in connection with the same transaction or series of transactions and a written statement by the person making such assignment or order to that effect, is attached thereto or included therein; and

(f) *Filing with employer.* A copy of such an assignment or order and of the written statement provided for in subdivision (d) hereof, authenticated by a notary public, shall have been filed with the employer, accompanied by an itemized statement of the amount then due to the assignee; provided, that at such time no other assignment or order for the payment of any wages or salary is subject to payment, and no attachment or levy on execution against said wages or salary is in force. Any valid assignment, when filed in accordance with the provisions contained herein, shall have priority with respect to any subsequently filed assignment or order or subsequent attachment or levy on execution. Any power of attorney to assign or collect wages or salary shall be revocable at any time by the maker thereof.

Earned wages; maximum portion subject to assignment. No assignment of, or order for wages or salary shall be valid unless at the time of the making thereof, such wages or salary have been earned, except for the necessities of life and then only to the person or persons furnishing such necessities of life directly and then only for the amount needed to furnish such necessities. Under any assignment of, or order for wages or salary to be earned, a sum not to exceed 50 per centum of the assignor's wages or salary, and not to exceed 25 per centum of the assignor's wages or salary, upon the showing that such wages or salary are necessary for the support of his mother, father, spouse, children or other members of his family, residing in this State and supported in whole or in part by his labor, shall be collectible from the assignor's employer at the time of each payment of such wages or salary.

Reliance of employer on statements. The employer shall be entitled to rely upon the statements of fact in the written statement provided for in subdivisions (d) and (e) hereof, without the necessity of inquiring into the truth thereof, and the employer shall incur no liability whatsoever by reason of any payments made by him to an assignee under any assignment or order, in reliance upon the facts so stated.

Wages under plan for central place of payment. No assignment of or order for wages or salary earned or to be earned shall be valid under any circumstances, if the wages or salary earned or to be earned are paid under a plan for payment at a central place or places established under the provisions of Section 204a of this code.

Authorized deductions. This section shall not apply to deductions which the employer may be requested by the employee to make for the payment of life, retirement, disability or unemployment insurance premiums, for the payment of

taxes owing from the employee, for contribution to funds, plans or systems providing for death, retirment, disability, unemployment, or other benefits, for the payment for goods or services furnished by the employer to the employee or his family at the request of the employee, or for charitable, educational, patriotic or similar purposes. (Stats.1937, c. 90, p. 202, § 300, as amended Stats.1941, c. 529, p. 1851, § 5; Stats.1943, c. 1048, p. 2988, § 1.)

AMENDED IN ASSEMBLY JUNE 8, 1967

CALIFORNIA LEGISLATURE—1967 REGULAR SESSION—ASSEMBLY BILL No. 457

Introduced by Assemblymen Brathwaite, Bill Greene, Burton, Ralph, Elliott, MacDonald, McMillan, Moretti, Roberti, Shoemaker, Bagley, and McGee, February 8, 1967—Referred to Committee on Finance and Insurance

An act to amend Sections 538, 540, 542, and 690.11 of the Code of Civil Procedure, relating to attachment of earnings

The people of the State of California do enact as follows:

SECTION 1. Section 538 of the Code of Civil Procedure is amended to read:

538. The clerk of the court, or the justice, where there is no clerk, must issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff showing:

LEGISLATIVE COUNSEL'S DIGEST

AB 457, as amended, Brathwaite (Fin. & Ins.). Attachment of earnings.

Amends Secs. 538, 540, 542, and 690.11, C.C.P.

Exempts from attachment all of defendant's earnings for personal services, whereas at present only one-half of earnings for personal services rendered within 30 days preceding levy of attachment is automatically exempt, and other half is exempt if necessary for use of debtor's family, residing in this state, subject to prescribed exceptions.

Provides that one-half ~~"net earnings"~~ or the first ~~$100~~ *$70* per week of personal service earnings, whichever is greater, ~~that is~~ received for services rendered during 30 days preceding execution, is exempt from ~~such~~ execution without filing claim of exemption, rather than exempting just one-half of ~~"earnings"~~ *earnings* for such services rendered within 30 days preceding execution.

~~Defines "net earnings."~~

Modifies exemption from execution of all of earnings for personal services rendered within such 30 days, when necessary for use of debtor's family, by deleting requirement that family reside in this state ~~and by deleting exception for debts incurred by debtor or family for necessaries.~~

Vote—Majority; Appropriation—No; State Expense—No.

1. The facts specified in Section 537 which entitle him to the writ;

2. The amount of the indebtedness claimed, over and above all legal setoffs or counterclaims, or the amount claimed as damages; and

3. That the attachment is not sought, and the action is not prosecuted, to hinder, delay, or defraud any creditor of the defendant.

Provided, however, that no attachment may be issued under this chapter in any action in which the sum claimed, exclusive of interest and attorney's fees, is less than one hundred twenty-five dollars ($125).

SEC. 2. Section 540 of the Code of Civil Procedure is amended to read:

540. The writ must be directed to the sheriff, or a constable, or marshal of any county in which property of such defendant may be, and must require him to attach and safely keep all the property of such defendant within his county not exempt from execution, specifically excluding the earnings of such defendant, or so much of the property of such defendant as may be sufficient to satisfy the plaintiff's demand against such defendant, the amount of which must be stated in conformity with the complaint, unless such defendant give him security by the undertaking of at least two sufficient sureties, which must first be approved by a judge of the court issuing the writ, or if said writ of attachment is issued to another county then by a judge of a court, having jurisdiction in cases involving the amount specified in the writ, in the county where the levy shall have been, or is about to be, made, or deposit a sum of money with the sheriff, constable, or marshal in an amount sufficient to satisfy such demand against such defendant,

besides costs, or in an amount equal to the value of the property of such defendant which has been or is about to be attached, in which case to take such undertaking or sum of money in lieu of the property which has been or is about to be attached.

In the event that the action is against more than one defendant, any defendant whose property has been or is about to be attached in the action may give the sheriff, constable or marshal such undertaking which must first be approved by the judge as hereinabove provided, or deposit such sum of money, and the sheriff, constable, or marshal shall take the same in lieu of such property. Such undertaking, or the deposit of such sum of money, shall not subject such defendant to, or make him answerable for, any demand against any other defendant, nor shall the sheriff, constable, or marshal thereby be prevented from attaching or be obliged to release from attachment, any property of any other defendant; provided, however, that such defendant, at the time of giving such undertaking to, or depositing such sum of money with the sheriff, constable, or marshal shall file with the sheriff, constable, or marshal a statement, duly verified by his oath, wherein such defendant shall state the character of his title to the attached property and the manner in which he acquired such title, and aver and declare that the other defendant or defendants, in the action in which said undertaking was given or such sum of money was deposited, has or have not any interest or claim of any nature whatsoever in or to said property.

Several writs may be issued upon the same affidavit and undertaking simultaneously or from time to time within 60 days after the filing of the affidavit and undertaking, to the sheriffs, constables, or marshals of any county or counties, whether or not any writ previously issued has been returned.

SEC. 3. Section 542 of the Code of Civil Procedure is amended to read:

542. The sheriff, constable, or marshal, to whom the writ is directed and delivered, must upon receipt of instructions in writing, signed by the plaintiff or his attorney of record, and containing a description of the property, and in the case of real property or growing crops the name of the record owner of the real property to be attached, or upon which the crops are growing, execute the same without delay, and if the undertaking mentioned in Section 540 of this code be not given, as follows:

1. Real property, standing upon the records of the county in the name of the defendant, must be attached, by recording with the recorder of the county a copy of the writ, together with a description of the property attached, and a notice that it is attached, and by serving an occupant of the property, if there is one upon the property at the time service is attempted, with a similar copy of the writ, description and notice, or if there is no occupant then on the property, then, by posting the same in a conspicuous place on the property attached. Service upon the occupant may be made by leaving said copy of the writ, description and notice with the occupant personally, or, in his absence, with any person, of suitable age and discretion, found upon the property at the time service thereof is attempted and who is either an employee or agent of such occupant or a member of his family or household. Where the property described in the notice consists of more than one distinct lot, parcel or governmental subdivision and any of such lots, parcels, or governmental subdivisions lie with relation to any of the others so as to form one or more continuous, unbroken tracts, one service or posting need be made as to each such continuous, unbroken tract.

1a. Growing crops (which, until severed, shall be deemed personal property not capable of manual delivery), growing upon real property standing upon the records of the county in the name of the defendant, must be attached by recording with the recorder of the county a copy of the writ, together with a description of the growing crops to be attached, and of the real property upon which the same are growing, and a notice that such growing crops are attached in pursuance of the writ, and by serving an occupant of the real property, if there is one upon the real property at the time service is attempted, with a similar copy of the writ, description and notice, or if there is no occupant then on the real property, then, by posting the same in a conspicuous place on the real property. Service upon the occupant may be made by leaving said copy of the writ, description and notice with the occupant personally, or, in his absence, with any person, of suitable age and discretion, found upon the real property at the time service thereof is attempted and who is either an employee or agent of such occupant or a member of his family or household. Where the real property described in the notice consists of more than one distinct lot, parcel or govern-

mental subdivision, and any of such lots, parcels or governmental subdivisions lie with relation to any of the others so as to form one or more continuous unbroken tracts, one service or posting need be made as to each such continuous unbroken tract.

Whenever growing crops have been attached under the provisions of this subdivision, which will greatly deteriorate in value, unless properly cultivated, cared for, harvested, packed or sold, the court issuing such writ, upon application of the person in whose favor the writ runs, and after due notice to the owner of said property, may direct the sheriff to take possession of said property and to cultivate, care for and preserve the same and, when necessary, harvest, pack and sell such property. Any sale of such property shall be made in the same manner that property is sold on execution and the proceeds must be retained by the sheriff to be applied to the satisfaction of any judgment which may be recovered in the action in which said writ is issued. The court shall order said applicant to pay such expenses in advance if the court may deem it proper, or may direct that the whole or any part of such expenses be paid from the proceeds of any sale of such property.

2. Real property, or any interest therein, belonging to the defendant, and held by any other person, or standing on the records of the county in the name of any other person, must be attached in the same manner as is real property standing upon the records of the county in the name of the defendant by the provisions of subdivision 1 of this section and the notice of attactment shall state that the real property therein described, and any interest of the defendant therein held by or standing on the records of the county in the name of such other person (naming him), are attached. In addition, a similar copy of the writ, description and notice shall be delivered to such other person, or his agent, if known and within the county, or left at the residence of either, if within the county. The recorder must index such attachment when recorded, in the names, both of the defendant and of the person by whom the property is held or in whose name it stands of record.

2a. Growing crops (which, until severance, shall be deemed personal property not capable of manual delivery), or any interest therein, belonging to the defendant, and growing upon real property held by any other person or standing upon the records of the county in the name of any other person, must be attached in the same manner as growing crops growing upon real property standing upon the records of the county in the name of the defendant are attached by the provisions of subdivision 1a of this section, and the notice of attachment shall state that the crops therein described or any interest of the defendant therein, held by, or standing upon the records of the county in the name of, such other person (naming him), are attached in pursuance of the writ. In addition, a similar copy of the writ, description and notice shall be delivered to such other person, or his agent, if known and within the county, or left at the residence of either, if known and within the county. The recorder must index such attachment when recorded, in the names of both the defendant and of the person by whom the real property is held, or in whose name it stands on the record.

Whenever growing crops have been attached under the provisons of this subdivision, which will greatly deteriorate in value unless properly cultivated, cared for, harvested, packed or sold, the court issuing such write, upon application of the person in whose favor the writ runs, and with or without notice as the court directs to the owner of said property, may direct the sheriff to take possession of said property and to cultivate, care for and preserve the same and, when necessary, harvest, pack and sell such property. Any sale of such property shall be made in the same manner that property is sold under execution and the proceeds must be retained by the sheriff to be applied to the satisfaction of any judgment which may be recovered in the action in which said writ is issued. The court shall order said applicant to pay such expenses in advance if the court may deem it proper, or may direct that the whole or any part of such expenses be paid from the proceeds of any sale of such property.

3. Personal property, capable of manual delivery, in the possession of the defendant, must be attached by taking it into custody. When the personal property is used as dwelling, such as a house trailer, mobilehome, or boat, the same is to be attached by placing a keeper in charge of the property, at plaintiff's expense, for at least two (2) days. At the expiration of said period the officer shall remove its occupants, and take the property into his immediate custody, unless other disposition is made by the court or the parties to the action. Whenever a levy under attachment or execution shall be made on personal property, other than money, or

a vehicle required to be registered under the Vehicle Code belonging to a going concern, then the officer making the levy must, if the defendant consents, place a keeper in charge of said property levied upon at plaintiff's expense, for at least two days, and said keeper's fees must be prepaid by the levying creditor. During said period defendant may continue to operate in the ordinary course of business at his own expense provided all sales are for cash and the full proceeds are given to the keeper for the purposes of the levy unless otherwise authorized by the creditor. After the expiration of said two days the sheriff, constable, or marshal shall take said property into his immediate possession unless other disposition is made by the court or the parties to the action.

4. In cases where the sheriff, constable, or marshal is instructed to take into possession personal property capable of manual delivery, whether the same is to be placed in a warehouse or in custody of a keeper, the sheriff, constable or marshal shall require, as a prerequisite to the taking of such property, that in addition to written instructions the plaintiff or his attorney of record deposit with the sheriff, constable or marshal, a sum of money sufficient to pay the expenses of taking and keeping safely said property for a period not to exceed 15 days. In the event that a further detention of said property is required, the sheriff, constable or marshal must, from time to time, make written demand upon the plaintiff or his attorney for further deposits to cover estimated expenses for periods not to exceed five days each. Such demand must be served as provided in Section 1011 of this code, or by depositing such notice in the post office in a sealed envelope, as first-class registered mail, postage prepaid, addressed to the person on whom it is served at his last known office or place of residence. In the event that the money so demanded is not paid, the sheriff, constable or marshal shall release the property to the person or persons from whom the same was taken. There shall be no liability upon the part of the sheriff, constable or marshal to take or hold personal property unless the provisions of this section shall have been fully complied with. There shall be no liability upon the part of the sheriff, constable or marshal, either to the plaintiff or the defendant for loss by fire, theft, injury or damage of any kind to personal property capable of manual delivery while in the possession of the sheriff, constable or marshal either in a warehouse or in the custody of a keeper or en route to or from a warehouse unless the sheriff, constable or marshal shall be negligent in his care or handling of the property.

5. Debts and credits and other personal property not capable of manual delivery must be attached by leaving with the persons owing such debts, or having in his possession, or under his control, such credits and other personal property, or with his agent or, in the case of a corporation, with the president of the corporation, vice president, secretary, assistant secretary, cashier, or managing agent thereof, a copy of the writ, and, if the demand as stated in the writ does not exceed three hundred dollars ($300) exclusive of interest, attorney's fees and costs, a copy of the complaint in the action from which the writ issued, and, in every case, a notice that the debts owing by him to the defendants, or the credits and other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ; provided, however, that debts owing to the defendant by any of the following financial institutions: (a) banks; (b) savings and loan associations; (c) title insurance companies or underwritten title companies (as defined in Section 12402 of the Insurance Code); (d) industrial loan companies (as defined in Section 18003 of the Financial Code), maintaining branch offices, or credits or other personal property whether or not the same is capable of manual delivery, belonging to the defendant and in the possession of or under the control of such financial institution must be attached by leaving a copy of the writ and the notice, together with a copy of the complaint if required hereunder, with the manager or other officer of such financial institution at the office or branch thereof at which the account evidencing such indebtedness of the defendant is carried, or at which such financial institution has credits or other personal property belonging to the defendant in its possession or under its control; and no attachment shall be effective as to any debt owing by such financial institution if the account evidencing such indebtedness is carried at an office or branch there not so served, or as to any credits or other personal property in its possession or under its control at any office or branch thereof not so served.

6. When checks, drafts, money orders and other orders for the withdrawal of money from a banking corporation or association, the United States, any state

or public entity within any state, payable to the defendant or judgment debtor on demand, come into the possession of a levying officer under a writ of attachment or execution, the sheriff, constable, or marshal, to whom the writ is directed and delivered, shall promptly thereafter endorse the same and present, or cause the same to be presented, for payment. The sheriff, constable, or marshal shall endorse such check, draft, money order or other order for the withdrawal of money by writing the name of the defendant or judgment debtor thereon and the name and official title of the officer making the levy with the statement that such endorsement is made pursuant to levy of writ of attachment or execution and giving the title of court and cause in which such writ was issued, and such endorsement shall be sufficient endorsement and no banking corporation or association or public entity on which said check, draft, money order or other order for the withdrawal of money is drawn shall incur any liability to any person, firm or corporation by reason of paying to such officer such check, draft, money order or other order for withdrawal of money by reason of such endorsement, nor shall the officer making the levy incur any liability by reason of his endorsing and presenting for and obtaining payment of such check, draft, money order or other order for the payment of money; provided, however, that the funds or credit resulting from the payment of such check, draft, money order or other order for withdrawal of money shall be held by said officer subject to the levy of said writ of attachment or execution. If it appears from the face of such check, draft, money order or other order for the withdrawal of money that the same has been tendered to the defendant or judgment debtor in satisfaction of a claim or demand and that endorsement thereof shall be considered a release and satisfaction by defendant or judgment debtor of such claim or demand, then, in such event, the officer making the levy shall not endorse said check, draft, money order or other order for the withdrawal of money unless the defendant or judgment debtor shall first endorse the same to the officer making the levy; provided, however, that if said defendant shall not endorse said check, draft, money order or other order for withdrawal of money to the officer making the levy, said officer may thereafter hold such check, draft, money order or other order for the withdrawal of money subject to such levy and shall incur no liability to the defendant or judgment debtor or to any other person, firm or corporation for delay in presentment of the same for payment.

SEC. 4. Section 690.11 of the Code of Civil Procedure is amended to read:

690.11. All of the earnings of the defendant received for his personal services shall be exempt from attachment without filing a claim for exemption as provided for in Section 690.26.

One-half of the net earnings of the judgment debtor, or the first ~~one hundred dollars ($100)~~ *seventy dollars ($70)* per week, whichever sum is greater, received for his personal services rendered at any time within 30 days next preceding the levy of execution shall be exempt from execution without filing a claim for exemption as provided in Section 690.26.

All of such earnings shall be exempt from execution, *if* necessary for the use of the debtor's family, ~~and~~ supported in whole or in part by such debtor, unless the debts are: (*a*) *incurred by such debtor, his wife or family, for the common necessaries of life; or* (*b*) incurred for personal services rendered by any employee, or former employee, of such debtor.

~~"Net earnings" as used in this part constitutes the total earnings of the judgment debtor less deductions required by law or his employer, such as income tax, unemployment insurance or retirement, but voluntary deductions directed by the judgment debtor to be deducted from his salary, such as U.S. Savings Bonds, health plans or charitable contributions shall not be deducted from total earnings in determining "net earnings."~~

ASSEMBLY CALIFORNIA LEGISLATURE

(By Yvonne W. Brathwaite, Member of the Assembly, Sixty-Third District, Los Angeles)

To the Members of the Senate Insurance and Financial Institutions Committee:
Re: AB 457.

This bill in its present form was the result of a special subcommittee report on garnishment of the Assembly Judiciary Committee. The bill makes two changes in the law of garnishment. *First:* It eliminates garnishment of wages before

Court Judgment. *Second:* It adds to the present 50% exemption after the judgment to provide 50% or $70 whichever is greater. The reason for the proposed changes and exhibits that dramatize the problems are as follows:

I. *No Attachment of Wages Before Judgment:* This aspect of AB 457 attempts to ease some of the problems that have caused California [1] to be the Bankruptcy Capitol of the World. California in 1965 had 25,580 employee bankruptcies close to twice as many as the next highest state.

The correlation between harsh garnishment laws and bankruptcy results from the reaction the employer must have to volumes of garnishment.

Many employers follow a rule of discharging an employee after one, two or three garnishments. The processing of the garnishment can cost the employer as much as $7.50 to process.

The threat of discharge from employment in the case of wage garnishment has caused many collection agencies to use the threat of garnishment to extract payment of debts whether owed or not or whether there may be a valid defense. Attached are examples of letters [2] used to coherce payment.

Employees of State, County, City or governmental entities already enjoy this protection and their ability to obtain credit has not been hampered.

A summary of the disposition of 480 cases in Los Angeles Municipal Court shows 98% were contract actions [3] and 57% were accompanied by Writs of Attachment for wages.

II. The second aspect of this bill is to provide $70 per week for a family exempt from garnishment without the necessity of going through a complex exemption procedure.

Attached is a table [4] to show how much a person earning $100 per week has exempt under various laws. This portion of the bill allows a minimum amount for use by the family of the debtor.

This bill is supported by: Beneficial Management Corp., State Bar of California, Attorney General, UAW, Calif. Teamsters Legislative Counsel, United Steelworkers of America and Fireside Thrift.

BANKRUPTCY BILL BATTLE—WAGE GARNISHMENT CURB URGED TO EASE HARDSHIP

(By Leonard Greenwood)

California legislators today are scheduled to consider a bill designed to take some of the pressure off persons on the verge of bankruptcy.

The bill would bar garnishment of a worker's earnings until the creditor had obtained a court judgment. And even then, the worker would be allowed to keep at least the first $70 earned a week.

At present, 50% of a person's salary, with no minimum limit, may be garnished before a court judgment simply by obtaining a writ of attachment from the clerk of the Municipal or Superior Court.

Sponsors believe the bill would ease cases of extreme hardship and cut the bankruptcy rate in California . . . known as the bankruptcy capital of the world.

But it faces tough opposition as a result of intensive lobbying by some businessmen, loan firms and collection agencies.

ONE-VOTE MARGIN IN ASSEMBLY

The bill, sponsored by Yvonne Brathwaite, Democratic Assemblywoman for the 63rd District (Southwest Los Angeles), scraped through the Assembly June 13 by one vote.

Today it is scheduled to go before the Senate Committee on Finance and Insurance.

The bill would amend four sections of the Code of Civil Procedure relating to the attachment of earnings.

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[1] U.S. Department of Labor, Bureau of Labor Standards fact sheet of wage garnishment, p. 3.
[2] National Finance, Arc Loan, Northern Calif. Division Office.
[3] Summary of Actions filed.
[4] Table.

Already, it has been watered down by compromise: The original draft would have provided that half, or the first $100 a week of salary, (whichever was the greater amount), be exempt from attachment.

OFTEN CAUSES EXTREME HARDSHIP

The present law, allowing up to 50% of a salary to be garnished, often causes extreme hardship for low-income families. A worker with less than $100 a week wages is left with less than $50 a week to care for his family, unless he goes through a lengthy exemption procedure.

"This would be only a small improvement (the proposed bill). But it would be where relief is most urgently needed," said Mrs. Brathwaite.

"Seventy dollars a week is nothing like enough. It's a compromise. But it's a beginning. A man might be able to feed his family on $70 a week . . ."

Some Californians already are protected to some extent from garnishment before a court judgment. No creditor may obtain a garnishment against the earnings of a state employe without a judgment.

"This bill," said Mrs. Brathwaite, "would give other residents of California the same protection already enjoyed by state workers."

FACTOR IN SOARING RATE

Bankruptcy referees, social workers, lawyers and many businessmen agree the severity of the state's present garnishment laws is one of the main factors in California's soaring bankruptcy rate.

Last year, the number of bankruptcies in Southern California rose to a high of 26,203. The year before, it was 24,732, and in 1964, it was 21,000. Ninety percent of them are not business failures, but ordinary people working for a wage or salary, who have spent more than they can afford.

Garnishments are so simple to obtain in California, they have put a heavy financial and staff burden on employers.

Most employers now fire a worker after two, or at most three, garnishments.

Social workers and business operators estimate it costs between $5 and $10 to make each garnishment.

"For a firm with thousands of employees, this becomes big money," said Mrs. Brathwaite. "Sometimes, notices are delivered to big firms in bundles."

The result is that workers close to the financial borderline are often pushed into bankruptcy by garnishments.

For many workers, bankruptcy is the only way of saving their job. And some firms advise their employees to go bankrupt to ease the pressure on the firm's accounting department.

Mrs. Brathwaite, whose constituency contains a high proportion of lower income workers, plans to keep up her work toward relief from this pressure.

"California has one of the highest bankruptcy rates in the country," she said. "There must be some reason for it. I feel wage garnishments have a big effect on the number of bankruptcies."

A state-by-state comparison of garnishment laws and bankruptcy rates seems to bear this out.

WIDE VARIANCE IN RATES

In California, 50% of a worker's salary may be garnished, and the bankruptcy rate is 153 for every 100,000 of population.

In New York, only 10% of a worker's salary may be garnished, and the bankruptcy rate is 28 per 100,000.

In Texas, no wage garnishment is allowed, and the bankruptcy rate is 3 per 100,000.

Mrs. Brathwaite knows it will be a tough battle to get the bill through the Senate Committee.

"I've had strong support from employe organizations, labor unions, credit unions and, generally, finance companies and business.

"But there's very strong opposition from some sections of the business community, especially . . . firms that sell largely on credit.

FOUGHT COLLECTION AGENCIES

"The toughest competition comes from the collection agencies. As a practicing attorney, I've had a lot of opportunity to see what happens in these cases," she said.

"Someone buys too much on credit and gets into difficulty. The creditor puts on the pressure for payment. If he gets no results, he hands over the case to the collection agency and they pull no punches . . .

"The collection agencies will push people all the way. They get a percentage of whatever they recover, so they're out to get as much as they can. "They'll pressure and harass a debtor with telephone calls, demands, threats and warnings about wage garnishments.

"Often they push so hard the debtor has no alternative but to go bankrupt. But the collection agencies don't care. They have no financial investment. If the man pays, they get their cut. If he goes bankrupt, they lose nothing and move on to the next case.

DISPUTES FIRMS' STATEMENT

"The small companies which oppose the bill say they will stop sales to the low-income worker if this bill goes through. But I know this isn't true, because they sell now to the welfare recipient and there is nothing they can attach there.

"I believe that if this bill is passed the bankruptcy rate will drop. There are always some people who try to get out of paying their bills, but most people are honest. They want to pay their debts to keep a good credit rating, because when you have a low wage, this is the only way you can live, on your credit.

"If you give a person who is hard pressed a chance to work out his problems, and he doesn't have the immediate pressure of losing half his wage, or even his job through too many garnishments, he may not be forced into bankruptcy.

"Sometimes, I wonder why people can't see the simple truth. If a man can keep his head above water, he can keep on paying his debts. If you push him beyond his endurance, he goes under, into bankruptcy. Then his debts are canceled out.

"I can't see that anybody gains from that."

WAGE GARNISHMENT

Wage garnishment is a collection method used by creditors to force payments on an employee's debts by requiring the employer to deduct payments from the employee's earnings before he receives his paycheck. Garnishment is a dangerous prospect for the wage earner because it reduces his available income for other day-to-day expenses, and because of the possibility he may lose his job, due to the employer's unwillingness to become involved in the garnishment process. (New York this year became the first State to prohibit discharging an employee solely because his pay is garnished.)

Garnishment laws include some protection for the debtor by exempting a portion of his earnings from the garnishment proceedings, to enable him to continue to support himself and his family. The portion of wages that may be garnished is limited to some extent in 48 States, the District of Columbia, and Puerto Rico; in a few of these States it is very strictly limited. Wages are not subject to garnishment in Texas and Pennsylvania.

The exemptions, and the circumstances under which they may be claimed, vary greatly from State to State. Some jurisdictions exempt a percentage of the worker's earnings, while others exempt a specified amount. Sometimes the exemption is allowed only to a head of family or only to residents of the particular State. Under some laws, it is still possible to garnish a worker's wages for two or more debts at the same time. Thus some States give more protection to a debtor than others. For instance, the California law exempts 50 percent of the worker's wages in all cases, and up to 100 percent if necessary for the use of the debtor's family, except for debts for necessaries. In actual fact, however, a very small minority of those garnished obtain an exemption of over 50 percent due to the complexities of the law. In Maine the exemption is $30 for the preceding month. On the other hand, Hawaii exempts from garnishment 95 percent of the first $100 per month, 90 percent of the next $100, and 80 percent of the balance.

Sometimes the debtor must specifically claim the exemption himself or must prove to the court that the family needs his earnings. The person living in poverty and ignorance is not likely to be aware of his rights, and in some cases his entire paycheck may be garnished.

There seems to be a direct connection between the number of garnishments and the number of personal bankruptcies. Studies have shown that States which have

harsh garnishment laws and poor credit regulation have the highest number of personal bankruptcies proportionate to their population. States with less harsh laws, such as New York which exempts 90 percent of the debtor's pay, have a much lower rate of personal bankruptcies than do States with inadequate exemption provisions.

In 1965 the number of personal bankruptcies filed in Federal courts increased for the 13th straight year. Over 180,000 bankruptcies were filed, of which 163,400 (over 90 percent) were personal or "consumer" bankruptcies. A survey of referees in bankruptcies, conducted early in 1965 by the Administrative Office of the United States Courts, stated "The harsh garnishment laws of California, Minnesota, Ohio, Tennessee, Virginia, and Michigan were given as a major cause of insolvency. Loose credit was frequently blamed. Grasping practices, harsh collection laws, inadequate exemptions, unregulated finance charges on retail credit sales and unrealistic deficiency claim judgments were blamed along with reckless buying and cognovit notes." [1] The report indicated that when a collection agency goes after a debtor's wages, facing his employer's policy of nongarnishment, he files bankruptcy in order to save his job. Other States also cited as "bankruptcy capitals" are Alabama, Colorado, and Oregon.

In the States mentioned above, the following number of voluntary bankruptcies were filed by employees in 1965:

Alabama	9,522	Ohio	14,850
California	25,580	Oregon	3,080
Colorado	3,203	Tennessee	8,602
Michigan	5,877	Virginia	4,049
Minnesota	2,567		

These figures can be compared with the number of employee voluntary bankruptcies in States that prohibit or strictly limit garnishment of wages:

Alaska	76	South Carolina	140
Florida	507	South Dakota	144
Pennsylvania	512	Texas	329

A law allowing only limited garnishment would be a deterrent to easy credit, because the businessman would be less inclined to use the courts as his collection agency, as is often the case now.

SAN DIEGO STATE COLLEGE,
San Diego, Calif., June 27, 1967.

Hon. RICHARD J. DOLWIG,
The State Senate,
Sacramento, Calif.

DEAR SENATOR DOLWIG: On the 13th of June the Senate gave first reading and referred to the Committee on Insurance and Financial Institutions, AB457. We would hope that you will accept the following written testimony, which is amply justified on the basis of the attached study.

As no bill has been introduced which would, as other states have done, simply remove the power of wage attachments, thereby forcing creditors to ration credit more carefully in their own and society's best interest, we must in our testimony support AB457.

In AB457 some provision is made whereby, unless the employee has been proven a debtor, his wages are exempt from attachment. In view of the severe consequences for the employee, of a wage attachment, this is a step in the right direction. The delineation of the "common necessities of life" distinction is also preferable.

We have sent similar letters and copies of the report to Senators James Mills, Jack Schrade, and Alfred Song. Although Senators Song and Mills are not on the Committee, we understand they support its passage.

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[1] A cognovit note, or confession of judgment, is a prior written admission of liability for a debt given by a debtor as security for the debt. Its effect is to simplify later legal procedures for the creditor to collect on the debt and, conversely, to make more difficult the debtor's efforts to contest it.

We would appreciate your giving this report consideration before reaching a decision on AB457.

Cordially,

MARJORIE S. TURNER,
Chairman, Department of Economics.
RAYMOND A. FLOREN, Jr.
Research Assistant, Department of Economics.

The consumer bankruptcy problem, which in California accounts for about 90% of all bankruptcy, is believed by most students to be closely related to wage attachment law and employer personnel practices.[1] While neither the law nor employer practices are held to cause the problems leading to bankruptcy, Robert O. Herrmann concludes that—

> "The use of bankruptcy to avoid wage garnishments, for example, could be reduced if the financially distressed had less reason to fear wage garnishment. This fear, at present is probably due more to threats of firing by unsympathetic employers than to concern over a temporarily reduced paycheck." [2]

Likewise, a California Assembly Interim Commitee Report cites as an argument for increased debtor's exemptions that "attachment (of wages' frequently leads to discharge of employment." [3]

The study here reported was directed toward this specific question: Do wage attachments in fact lead to discipline and discharge? Thus our survey solicited both the established or informal practices of employers who must ultimately withhold the attached wages. Union practices were also studied since presumably a union has an interest in the member who may be the target of attachments or who may be disciplined or discharged by the employer because of wage attachments.

Findings

The employer survey was a random sample of those employers, private and public, listed in the San Diego Chamber of Commerce publication *Manufacturers and Major Employers of San Diego County, 1965.* The analysis is made according to public and private employer, size of firms, and industry. Appendix A gives additional information on the nature of the sample, the number of returns, and the industrial coding.

Table 1 presents private employer practices relating to wage attachments.

TABLE 1.—PRIVATE EMPLOYER PRACTICES FOR REGULAR EMPLOYEES WHOSE WAGES ARE ATTACHED

[W—warning; D—disciplinary action; F—fired]

Standard industry code	Number reporting a policy	Attachment											No disciplinary action
		1st			2d			3d			4th	5th	
		W	D	F	W	D	F	W	D	F	Fired	Fired	
Contract construction	2	2	--	--	1	--	1	--	--	1	------	------	------
Manufacturing	21	21	--	--	19	1	1	8	--	12	4	1	3
Transportation and communication	5	5	--	--	4	--	1	2	--	2	------	------	1
Wholesale and retail	15	15	--	--	11	1	3	4	--	8	1	------	3
Finance, insurance, and real estate	12	11	--	1	7	--	4	4	--	3	2	------	2
Services	17	17	--	--	15	--	2	6	--	9	3	------	3
Total	72	71	--	1	57	2	12	24	--	35	10	1	13

Seventy-one of the 72 firms with a policy, or 98.6% of firms reporting on this question, gave a *warning* on the first wage attachment. On the second attachment, those willing to rely on a warning dropped to 80.3%, and twelve firms or about 17% fired the employee. For a third attachment, thirty-five additional firms reported they would fire the employee, which means that cumulative ⅔ of employees would fire an employee with as many as three wage attachments. In

addition, another 10 employers reported they would fire employees on the fourth attachment and another 1 for the fifth. Of the 72 companies reporting on this question of firing only 13 or 18% did *not* fire employees for wage attachment. Of these thirteen employers 9 reported wage attachments were not a problem.

This data must be interpreted in the light of wage attachment law. As it is possible for one creditor to attach 50% of an employee's wages both in multiple levies and in several separate but successive pay periods,[4] one bad debt may be the cause of the debtor's losing his job. This data fully supports the contention that wage attachment precipitates the firing of regular employees. In the case of probationary employee, 14 of the 72 or 19.5% of private employers reported a policy of firing on first garnishment. Six companies that normally gave 2 warnings to regular employees, gave only one to probationary employees. Most of the companies responding on this question (72%), however, treated all employees as regular employees.

Government employers were more inclined toward the use of disciplinary lay-offs than were private employers, but government units also considered firing as an appropriate answer to repeated garnishment.

Table 2 summarizes governmental unit policy from the returns from two city agencies, five state agencies and 27 county agencies.

WAGE EXEMPTION IN 10 LARGEST STATES FOR MARRIED PERSONS EARNING $100 PER WEEK [1]

State	Before judgment	After judgment	State	Before judgment	After judgment
Florida	$100	$100	New Jersey	$90	$90
Pennsylvania	100	100	New York	90	90
Texas	100	100	Illinois	85	85
Massachusetts	100	50	Ohio	75	75
Michigan	100	50	California	50	50

[1] 53 C.L.R. 1223.

APPENDIX A

Amount of Wages Exempted From Garnishment, by States

Alabama	75% [1]
Alaska	$350 (earned within 30 days) if married; $200 if single [2]
Arizona	50% (30 days) [3]
Arkansas	100% (60 days) [4]
California	50% (30 days); 100% where debt not for necessaries and needed to support debtor's family [5]
Colorado	70% for heads of families; 35% for single persons [6]
Connecticut	100% from attachment; post-judgment exemption set by court (minimum $25 per week) [7]
Delaware	90% (New Castle County); 60% (Kent and Sussex Counties) [8]

[1] ALA. CODE tit. 7, § 630 (1960).
[2] ALASKA STAT. § 09.35.080 (1962).
[3] ARIZ. REV. STAT. ANN. §§ 12–1594, 33–1126 (1956).
[4] If the wages plus personal property owned do not exceed $500 for married residents or heads of families or $200 for single residents. ARK. CONST. art. 9, §§ 1–2; ARK. STAT. § 30.207 (1962).
[5] CAL. CODE CIV. PROC. § 690.11.
[6] COLO. REV. STAT. § 77–2–4 (1963).
[7] CONN. GEN. STAT. REV. § 52–361 (Supp. 1964).
[8] DEL. CODE ANN. tit. 10, §§ 4913 (b), (c) (1953). In New Castle County, wages in excess of 90% can only be reached for necessaries. See text at note 36 *supra*.

District of Columbia	90% of first $200 per month, 80% of next $300, 50% of balance [9]
Florida	100% [10]
Georgia	$3 per day plus 50% of excess [11]
Hawaii	95% of first $100 per month, 90% of next $100, 80% of balance [12]
Idaho	50%; 75% where debt not for necessaries and needed to support debtor's family (30 days); maximum exemption $100 per month [13]
Illinois	85% or $45 per week, whichever is more; maximum $200 per week [14]
Indiana	$15 per week plus 90% of excess [15]
Iowa	$35 per week for head of family plus $3 for each dependent child under 18 [16]
Kansas	90% (3 months); 100% from garnishment by collection agencies [17]
Kentucky	90% of first $75 per month; maximum $67.50 [18]
Louisiana	80%; minimum $100 per month [19]
Maine	$30 (one month); minimum $10 [20]
Maryland	75% in some counties; $100 in others [21]
Massachusetts	100% prior to judgment; $50 per week after judgment [22]
Michigan	100% prior to judgment; [23] after judgment 60% for householders having a family, 40% for others, with certain minima and maxima [24]
Minnesota	50%; 100% (30 days) where necessary for use of family [25]
Mississippi	$100 for heads of families; $50 for single persons [26]
Missouri	90% for heads of families [27]
Montana	50% (45 days); 100% where debt not for necessaries and needed for use of debtor's family [28]

[9] D.C. CODE ANN. § 16–572 (Supp. 1965).
[10] Limited to resident heads of families. FLA. STAT. § 222.11 (1963). A number of states limit the exemption to residents or to heads of families or to cases where there is a showing that the portion claimed exempt is necessary for the support of the debtor's family or to combinations of these factors. *E.g.*, Iowa and Kansas, notes 193, 194 *infra*. Such limitations will not generally be noted.
[11] GA. CODE ANN. § 46–208 (Supp. 1963).
[12] HAWAII REV. LAWS § 237–1 (Supp. 1963).
[13] IDAHO CODE ANN. § 11–205(7) (1947).
[14] ILL. REV. STAT. § 62–73 (1963). For garnishment procedure see, ILL. REV. STAT. § 11–21 (1963)
[15] IND. ANN. STAT. § 2–3501 (1946). *But cf.* IND. ANN. STAT. § 3–505 (1946); see Pomeroy v. Beach, 149 Ind. 511, 49 N.E. 370 (1898).
[16] IOWA CODE § 627.10 (1958). No creditor may garnish for more than $150 plus costs.
[17] Kan. Gen. Stat. Ann. § 60–2310 (1964).
[18] Ky. Rev. Stat. §§ 427.010 (2), (3) (1962).
[19] La. Rev. Stat. tit. 13, § 3881 (1964).
[20] Me. Rev. Stat. tit. 14, ch. 501 § 2602(6) (Supp. 1965).
[21] Md. Ann. Code art. 9, §§ 31, 31A, 31B; art. 83, § 8 (Supp. 1965).
[22] Mass. Gen. Laws ch. 246, §§ 28, 32 Eighth (Supp. 1964).
[23] Mich. Stat. Ann. § 27A.4011(3) (1962). But see note 55 *supra*.
[24] The Michigan wage exemption is the most complex of any State:

	Householders			Others		
	Percent exempt	Dollars		Percent exempt	Dollars	
		Maximum	Minimum		Maximum	Minimum
1st garnishment:						
Wages for 1 week or less	60	$50	$30	40	$50	$20
Wages for more than 1 week	60	90	60	40	50	20
Subsequent garnishments:						
Wages for 1 week or less	60	30	12	30	20	10
Wages for 1 week to 16 days	60	60	24	30	20	10
Wages for more than 16 days	60	60	30	30	20	10

See Mich. Stat. Ann. §§ 27A.7511 (2), (3), 27A.4031 (1962). Higher amounts may be exempted by the court where the defendant is making support payments. Mich. Stat. Ann. § 27A.7511(4) (1962).

[25] Minn. Stat. Ann. §§ 550.37(13), 575.05 (Supp. 1964).
[26] Miss Code Ann. § 307 (Tenth) (Supp. 1964).
[27] Mo. Rev. Stat. § 525.030 (1949).
[28] Mont. Rev. Codes Ann. § 93–5816 (1964).

Nebraska	90% for heads of families [29]
Nevada	50% (30 days); 100% where debt not for necessaries and needed for use of debtor's family [30]
New Hampshire	$20 per week [31]
New Jersey	90%; minimum $18 per week [32]
New Mexico	75% for heads of families [33]
New York	90% [34]
North Carolina	100% (60 days) where needed for use of debtor's family [35]
North Dakota	$35 per week or, if head of family, $50 plus $5 for each dependent, but no more than $25, per week [36]
Ohio	80% of first $300 per month and 60% of balance for heads of families (minimum $150); $100 (30 days) for others [37]
Oklahoma	75% (90 days); 100% where needed to support family [38]
Oregon	$175 (30 days) [39]
Pennsylvania	100% [40]
Rhode Island	$30 [41]
South Carolina	100% (60 days) where needed for use of debtor's family [42]
South Dakota	100% (60 days) where needed for use of debtor's family [43]
Tennessee	$17 per week for head of family plus $2.50 per week for each dependent under 16; $12 per week for other [44]
Texas	100% [45]
Utah	50% (30 days); minimum $50 if married or head of family [46]
Vermont	50% or $25, whichever is less [47]
Virginia	75%; minimum $100 per month, maximum $150, for heads of families; for others 50% of the above [48]
Washington	$35 per week and $5 for each dependent; maximum $50 per week, for persons who have families dependent on them; $25 per week for others [49]

[29] Neb. Rev. Stat. § 25–1558 (1964).
[30] Nev. Rev. Stat. § 21.090(h) (1963).
[31] N.H. Rev. Stat. Ann. § 512:21 II (Supp. 1963).
[32] N.J. Rev. Stat. §§ 2A: 17–56, 17–50 (1951). Where the debtor's annual income exceeds $2,500 the exemption may be reduced. N.J. Rev. Stat. § 2A: 17–56 (1951).
[33] 80% if the earnings for the past 30 days are less than $100. N.M. Stat. Ann. § 26–2–27 (1965).
[34] No income execution is permitted if the debtor's income is $30 a week or less. N.Y. Civ. Prac. Laws & Rules §§ 5231(e), 6202. See Morris Plan Industrial Bank v. Gunning, 295 N.Y. 324, 67 N.E.2d 510 (1946).
[35] N.C. Gen. Stat. § 1–362 (1953).
[36] N.D. Laws 1965, ch. 231, § 1, at 449.
[37] Ohio Rev. Code Ann. §§ 2329.66 (F), 2329.62 (C), 2329.69 (Supp. 1964).
[38] Okla. Stat. Ann. tit. 31, §§ 1 (16) (Supp. 1964), 4 (Fifth) (1955); tit. 12, §§ 850, 851 (1960).
[39] "[E]xcept that when the debt is incurred for family expenses 50 per cent of such earnings shall be subject to such execution or other process." Ore. Rev. Stat. § 23.180 (1961).
[40] 42 Pa. Stat. tit. 42, § 886 (1930); see Lowe v. Jones, 414 Pa. 466, 200 A.2d 880 (1964); Right Lumber Co. v. Kretchmar, 200 Pa. Super. 335, 189 A.2d 302 (1963).
[41] R.I. Gen. Laws Ann. § 9–26–4 (12c) (1956).
[42] S.C. Code § 10–1731 (1962). *But see* text at note 37 *supra*.
[43] S.D. Code § 33.2404 (Supp. 1960). Total exemption is apparently limited to $1,500.
[44] Tenn. Code Ann. §§ 26–207, 208, 209 (Supp. 1965).
[45] Tex. Const. art. 16, § 28.
[46] Utah Code Ann. § 78–23–1 (7) (1953); Utah Rev. Cn. Proc. rule 64c (a) (1953).
[47] Vt. Stat. Ann. tit. 12, § 3020(5) (1958).
[48] Va. Code Ann. § 34–29 (Supp. 1964). The section adjusts the maxima and minima according to whether the debtor is paid weekly, biweekly, semimonthly or monthly. The section also makes it clear the 25% which may be garnished is 25% of the wages between the minimum and the maximum; therefore, the exemption is more accurately stated as $100 per month plus 75% of the next $50. The Virginia provision illustrates the problems that arise when dollar figures are used in exemption statutes. The section was amended in 1952, 1954, 1958, and 1960 in an effort to update the minima and maxima; it is still woefully out of date.
[49] Wash. Rev. Code § 7.32.280 (1964).

West Virginia	80%; minimum $20 per week [50]
Wisconsin	60% (30 days) with certain minima and maxima [51]
Wyoming	50% (60 days) [52]

[50] W. VA. CODE § 3834(3) (1961). West Virginia uses the term "suggest execution" for post-judgment wage levies. W. VA. CODE § 3834(1) (1961).
[51] WIS STAT. ANN. § 272.18 (15) (1958).
[52] WYO. STAT. ANN. § 1–422 (1957).

APPENDIX B

TYPE AND FREQUENCY OF ATTACHMENT AND EXECUTION LEVIES IN 100 MUNICIPAL COURT CASES

Thirty-one of the cases resulted in levies of writs of attachment or execution; there were attachments in 17, execution in 21. (The total exceeds 31 because in several cases there were both attachments and executions.) Altogether these cases produced a total of 68 levies, at least 47 of them wage garnishments (with respect to some levies the file did not disclose whether it was a levy on wages or other property.) The types and frequency of levies may be summarized as follows:

Type of property levied on	Attachment		Execution [1]		Total levies
	Number of cases	Number of levies	Number of cases	Number of levies	
Wages	7	8	13	39	47
Bank accounts	4	4	5	5	9
Cars or trucks	1	1	1	2	3
Other personal property and debts	1	2	0	0	2
Real property	1	1	1	1	2
Unknown	3	3	2	2	5
Total	17	19	*22	49	68

[1] Includes wage levies pursuant to California Code of Civil Procedure, sec. 710, which provides a procedure similar to execution for reaching the pay of employees of the State and its political subdivisions.
*In 1 case there were both wage levies and a levy on realty. Hence this total exceeds by 1 the figure previously given.

In five cases both writs of attachment and execution were used for wage levies. Thus, the total number of cases in which wage levies pursuant to either type of writ were made is 15. The above figures are conservative since the files do not always fully reflect all writs issued and levied.

BENEFICIAL MANAGEMENT CORP. OF AMERICA,
Morristown, N.J., June 30, 1967.

Hon. RICHARD J. DOLWIG,
Chairman, Insurance and Financial Institutions Committee, State Senate, Sacramento, Calif.

DEAR SENATOR DOLWIG: This statement is intended to convey to you and the members of the Committee on Insurance and Financial Institutions the position of Beneficial Management Corporation of America on AB 457, which bill is presently before your Committee.

Beneficial Management Corporation, whom I represent, operates the Beneficial Finance System, Western Auto Supply and Spiegel Mail Order House. Beneficial Management's experience and the available data convinces us that there exists a high correlation between the personal bankruptcy rate and California's harsh wage garnishment law. We feel that the time has come for positive legislative action to help stem the rising tide of personal bankruptcy. We believe that AB 457 is a fair compromise toward that end.

AB 457 effects the following reform:

1. Wage garnishment prior to judgment, i.e. through writs of attachment, is not permitted. We believe that wage garnishment prior to judgment is unfair in that how much a defendant owes, indeed whether he owes anything, is

undetermined until judgment is entered. Furthermore, the procedure of attachment before judgment lends itself to use as an instrument of coercion, albeit extortion, to secure the payment of unfounded claims. To the extent that the law permits of such abuse, the entire credit community is injured and, therefore, we strongly support the provision of AB 457 which ends the provision of writs of attachment on wages prior to judgment.

2. After judgment AB 457 provides for $70 a week exemption. This bill as originally introduced called for $100 a week exemption; and the present figure represents a compromise and reflects the need to recognize that, even a judgment debtor, must be left after execution with a sufficient portion of his earnings to feed his dependents and to continue the incentive to work. Under the present law, a man with a family earning $100 a week may have $50 executed upon and go home to his family and his landlord with $50. Under the proposed revision, the same man would take $70 home. We feel that the $20 may well make the difference between the debtor's salvaging his situation or succumbing to the temptation of bankruptcy; as such we consider it more wise than generous to concur in this compromise.

AB 457 is *primarily a business bill* in that it will benefit:

1. *Business*, by reducing losses through bankruptcy;

2. *Employers*, by reducing the number of garnishments they may be asked to process at a cost of $5.00 to $10.00 each; as well as increasing employee job performance as a result of reduced collection pressure; and

3. *Retail credit grantors*, the *consumer finance industry*, and *collection agencies* whose public image can use the shot in the arm that would ensue by passage of AB 457.

AB 457 *does not* remove needed effective collection tools. It merely makes them more equitable for all parties concerned.

I should further like to take this opportunity to call to the attention of the members of the Committee the Presidential directive to Attorney General Clark to make a comprehensive study of the problems arising from the operation of state garnishment laws. We feel this presages a possible further incursion of the Federal Government into areas of State concern and suggest that appropriate State action might deter such a possibility. A favorable report by your Committee would constitute such appropriate State action.

Should you wish further amplification of our position or reasons why we take the approach we do, please feel free to call. Thank you for your courtesy and consideration.

Very truly yours,

GEORGE D. NICKEL,
Regional Public Relations Director.

NATIONAL FINANCE CO., SAN FRANCISCO, CALIF.

Marie Turk, 45 Hillcrest Dr., San Rafael, Calif.:

Date	Mar. 16, 1967
Store	Korbette
Legal fee	$35.00
Collection expense	17.00
Court cost	6.00
Balance of account	16.59
Total	74.59

Re: Copy of Assignment to be served in due process attached.

Please advise this office of the approximate time you arrive home each evening.

This information is needed to permit the "Sheriffs' Office" to serve you with the usual "Writ and Summons" to cover the "Judgment" against "Wages and Personal Property."

If we do not hear from you at once the "Sheriffs' Office" will have no alternative but to serve you on the job at a time of their own choosing.

Once a judgment is obtained all Court Cases, Attorney fees, collection expense, etc. will become a part of your obligation.

CENTRAL FINANCE & AJUSTMENT CO., WATSONVILLE, CALIF.

Re Various accounts vs. Rivas.
Date 5–29–67. Amount $358.71
Evarado Rivas, 140 Grove St., Watsonville, Calif.

WAGE ATTACHMENT— OUR INVESTIGATION DEPARTMENT HAS INFORMED US THAT YOU ARE EMPLOYED BY JENSEN BROS. DON'T FORCE US TO LEVY ON YOUR WAGES, WE ARE AWARE OF THE FACT THAT YOU CAN CHANGE JOBS BUT, WE WILL RELOCATE YOU WHEN AND WHERE YOU RE-EMPLOY

REMIT AT ONCE OR . . . CONTACT US IMMEDIATELY

NORTHERN CALIFORNIA DIVISION OFFICE, OAKLAND, CALIF.

Metropolitan Schools v. Enrique Mercado
Legal Notice, as required by law, please be advised of the following:
"Declaration for Attachment of Earnings":
You are herewith given notice pursuant to Section 690.11 Chapter 5, of Title 14 of Part 2 of the Code of Civil Procedure of the State of California that a writ of attachment on your salary will be issued eight (8) days from the date of this notice by our attorney and served on your employer by the local sheriff's or marshal's office.
Balance owing $417.95.
Executed this 10th day of February 1967.
I declare under penalty of perjury that the foregoing is true and correct.
Signed R. G. BATHKE, *Mgr. Metropolitan Schools.*

(ATTENTION: In addition to the above, it has been our experience that when we attach a debtor's wages, his employer is inclined to discharge said employee since attachment causes the employer additional expense in keeping special records for the sheriff's or marshal's office regarding your wages. It is not our desire to cause undue hardship, so please be guided accordingly.)

COOPERATION COSTS LESS THAN LEGAL ACTION! YOU ALONE CONTROL NEXT MOVE!

ARC LOAN CO.,
ARC DISCOUNT CO.,
ARC INVESTMENT CO.,
February 28, 1967.

Re Arc Investment Co. #15–32818. Past due Feb. 15.

RICHARD MONTOYA,
3469 Westcott Ave.,
Baldwin Park, Calif.

DEAR SIR: Unless we receive a payment within five days, your employer will receive a demand notice of $979.11 the balance due on your account.

If you do not wish your employer to be a party to any further litigation, it is now necessary for you to advise us immediately as to your intentions in this matter.

The demand notice leaves our office on the above stated time, unless we receive your remittance.

Every employer values the honest, upright individual with a good reputation for paying their bills, promptly. We have said nothing to your employer about this account, but we cannot allow this matter to drag any longer.

Bring or send this notice with your payment.

Very truly yours,

L. GOLD.

To: Mr. George D. Nickel.
From: Linn K. Twinem, Esq.
Date: June 29th, 1967.
Subject: California A.B. 457.

1. In connection with the above bill which has been amended to provide for the exemption of $70 per week from a writ of attachment (garnishment), it

occurred to me that you might be able to make a helpful comparison with similar bills in two other states:

a. In Illinois a bill has been passed by the Senate which provides for the exemption of the wages of the head of a family of $65 a week and $50 for a single person. (The current exemption is $45 for everyone.)

b. In Tennessee a bill to allow an exemption from garnishment for heads of families of $50 or 50 percent of their weekly pay was given final passage and sent to the Governor. For persons other than heads of families, the exemption would be $40 or 40 percent of the weekly pay, whichever is greater.

INSTALLMENT CREDIT PROBLEMS AMONG PUBLIC WELFARE RECIPIENTS

(By Milton J. Huber*)

One chapter in the economic life of the poor that has received little attention is the installment credit problems of public welfare recipients, particularly within the context of welfare department policy on the use of welfare funds. Milwaukee is no exception. A Milwaukee family, to receive assistance, commits itself not to use "any of the money granted me by the Department of Public Welfare for any item not included in the relief budget." There are no provisions in relief grants for repayment of old debts.

This policy raises some interesting questions for client, creditor, and agency: Since installment credit is essentially a contractual relationship between a debtor and a creditor, what happens when the borrower subsequently commits himself to another "contract" with the Welfare Department, which in effect "tables" his commitment to the creditor? Since a corresponding commitment not to expect payment is not solicited from the creditor, how does the latter react to the welfare client's new commitment? Does the creditor accept the situation and wait passively in the wings until the welfare client's case is closed? If not, how does the client respond to requests for payment, caught between two conflicting obligations? What happens in terms of penalties for late payment and accumulating interest to the unpaid balance of a debt while the family is on welfare? If the client is on welfare for any length of time, does the increased obligation resulting from added interest and penalties awaiting him upon the close of his case jeopardize his post-welfare adjustment? How soon after discharge from welfare does the creditor exact payment? Does the garnishment of wages from his new employer jeopardize his job and reduce his income to such a low level that additional supplementary welfare funds are required to provide the family with a minimal level of subsistence? To what extent are welfare workers alert to these aspects of a case, trained to handle them, and solicited by the clients to help resolve them? Summarily, do welfare departments have more of a stake in the credit problems of their clients than their present program and policies would suggest?

PROCEDURE

In search of tentative answers to some of these questions, the writer worked with five second-year graduate social work students at the UWM School of Social Welfare to study the problem as a group thesis in partial fulfillment of the requirements for graduation.[1] An interview survey was undertaken of general relief recipients who had been garnisheed by retailers or consumer finance companies upon obtaining jobs and leaving welfare during the two months of October, 1964 and May, 1965. These particular months were selected because agency case-closings were not influenced by seasonal variations, such as unemployment, holidays, and seasonal production. Also, these months provided a sufficient period of time between case-closings and the interviewing period for sample families to encounter credit difficulties.

Of the 634 general relief families whose cases were closed in Milwaukee County during the two months under study, 148, or 23.3 per cent, had had their wages

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(*Milton J. Huber is associate professor, Center for Consumer Affairs, University Extension, Milwaukee, Wisconsin.)

[1] Gerald Hickman, William Robertson, Edwin Sybeldon, Dennis Vinson, and James Wallus, *An Exploratory Survey of the Installment Debt Problems of Fifty Milwaukee Families With Public Welfare History*. Unpublished masters thesis, School of Social Welfare, University of Wisconsin-Milwaukee, Milwaukee, Wisconsin, May, 1966.

garnisheed by the time of our inquiry, January and February, 1966. Since the primary interest of the study was in installment credit indebtedness, the sample was further limited to families who had been garnisheed by retail merchants or consumer finance companies. This narrowed the sampling to 69 families. A highly mobile group, living in deteriorating neighborhoods subject to land clearance for expressways and urban renewal projects, the 69 families proved to be an elusive quarry. All the known techniques of "skip tracing" by collection agencies were employed to locate and interview 50 families. What follows is a brief summation of the major findings which have implications for public welfare programming.

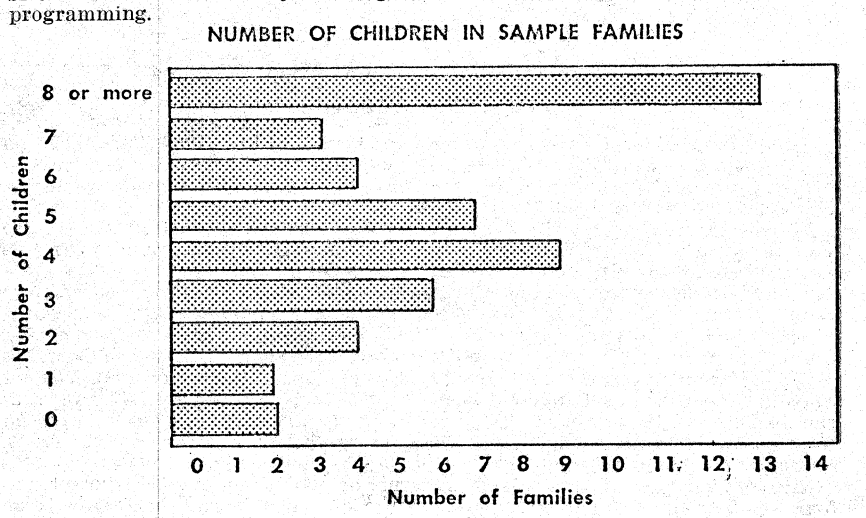

FIGURE 1. Distribution of 50 sample families by number of children.

FINDINGS

As might be expected, the incomes of the 50 families in our sample were considerably below those of Milwaukee families as a whole, the median for all Milwaukee being $6,664 in 1960.* Eighty per cent of the sample families were earning $5,000 or less at the time of our interviews, 54 percent earned less than $4,000. Fourteen percent of the sample reported current incomes of $6,000 or more; the comparable figure for Milwaukee, in 1960, was 59.9 per cent. In addition, incomes in Milwaukee have increased since 1960.

These income figures take on more meaning, in terms of standards of living, when viewed in the context of family size. Family size as a noteworthy factor in explaining financial problems among American families is suggested again here as in other studies.[2] The distribution of families by number of children is shown in Fig. 1; the median number of children among our families was 7.1. The average number was 4.96, compared to an estimated 1.3 in 1965 for Milwaukee.[3] Moreover, 79 per cent of the 248 children among our families were under 12 years of age. The more expensive years of child rearing are still before them, a disturbing prospect for marginal families under any circumstances.

INDEBTEDNESS

Our families reported carrying an average debt load of $1,520.50 into their welfare experience, a sizeable sum for families whose loss or lack of income necessitated welfare assistance. More than $1600 of short-term debt was reported

*Editor's Note: Income is used here in a general way to refer to money inflow, not necessarily currently earned income. Obviously, money inflow of welfare recipient coming from welfare sources is an income transfer.

[2] For example, *A Study of Financially Over-Extended Families*, The Merrill-Palmer Institute, 71 East Ferry Ave., Detroit, Mich., 1965.

[3] Milwaukee Bureau of Vital Statistics, *The Yellow Book*, 1965, page 3.

by 32 per cent of the families. On the other hand, 34 per cent of the group owed $400 or less.

Three out of four of the families reported that creditors had tried to collect payments while they were on welfare. In almost half of these cases ignorance of the families' welfare status could not be used as an excuse by creditors for attempting collections. The creditors had been informed by the families that they were on welfare. As a matter of fact, more than one in five of the families reported merchants or lenders offering them additional credit even though they knew the families were on welfare. One family insisted that one "easy credit" furniture store specializes in extending credit up to $500 to welfare families. There was some indication of families being lured into making credit purchases while on welfare, only to have the creditors, aware of the client's "no-credit pledge," threaten afterwards to expose the family to welfare authorities unless they used welfare funds to repay them.

Over a third of the families admitted that they made full or partial payment to creditors while on welfare to "get them off their backs," and a third of the group made payments of $8 per week. The average payment was slightly less than $21 per month. The average welfare grant in Milwaukee at the time of our survey was $115.57 a month.

Asked if their welfare worker had been of any assistance with their debt problems, 45 of our families replied in the negative, four in the affirmative, and one refused to answer. Fifteen of the families had asked for help. On the positive side, one worker interceded to get the harassing creditor to leave the family alone. On the other extreme, and more typical, another worker's response to a request for help was that they should "eat more beans and rice while you're having troubles." A number of families reported that welfare workers offered "eat more beans" as a solution to their debt problems. Of the majority of families who did not solicit help from their workers, 15 did not because they assumed from past experience none would be forthcoming, 12 felt their credit problems would be of no concern to welfare workers, and the balance felt it would be foolish to ask for help in view of the departmental policy on debt payments.

Almost a quarter of the families were garnisheed by creditors within two to four weeks after leaving welfare and returning to work. Another quarter were garnisheed within 90 days. In slightly more than half of these cases, the plaintiffs were "easy credit" merchants within the ghetto and the balance were consumer finance companies.

For the 50 families, garnisheed wages appeared to be closely associated with their welfare status. For some, garnishments proved to be the final straws that broke the backs of their marginal subsistence and put them on welfare again, either through loss of job or loss of incentive to continue working. In the words of one family, "The money left in the paycheck after garnishment wasn't enough for food money for a family our size." For other families, garnisheed wages to pay creditors reduced their paychecks to the point where they qualified for supplementary aid from welfare. "If I feel any strain I go down to welfare and they make up the difference," was the way one father expressed it. Among civil service workers particularly, there appeared to be a possible pattern: wage deductions are made to pay creditors under wage assignments; then the workers are sent to welfare for supplemental aid to make up for the creditor's "take."

By the time of our interviews, one of seven of our families had gone through bankruptcy since leaving welfare. Since bankruptcy, over half of these families were already experiencing new debt difficulties and the balance were making payments on old debts which they had subsequently reaffirmed with their creditors, even though these debts had been dismissed by the filing of bankruptcy. In all probability these families had reaffirmed these discharged debts to retrain or regain furniture and appliances subject to repossession under bankruptcy proceedings.

Repossession of merchandise was experienced by about a fourth of the families while on welfare. In two-thirds of the cases the repossessions cleared the accounts. Unfortunately, no information was obtained on the amount of payment already made for the various items by the time of their repossession. It would not be unusual to discover in such cases that payments made exceeded the original value of the merchandise repossessed. The other third of the families experiencing repossession of goods while on welfare were less fortunate. They were hit with deficiency judgments and their wages garnisheed shortly after

they obtained new employment. One family reported being garnisheed for a $700 balance due on a TV set after it had been repossessed.

Intermeshed in all their repossession experiences was another credit difficulty; namely, the co-signing of loans for other people. Roughly a third of our sample had served as co-makers of a loan for another, thinking they were vouching for the character of a friend or relative. Three out of four of this group had been garnisheed at least once for the defaulted debts for which they had co-signed.

Almost half of our families felt that the balances they owed their creditors at the time they went on welfare were higher by the time they went off welfare. A little over 10 per cent of the sample found their debt balance to be about what they had expected. One family reported a balance of $600 due on a small loan of $300 contracted before their welfare experience. Apparently, the rest of the sample lacked sufficient knowledge of their situations on which to base an opinion on the matter. There is every reason to believe that interest on the debts left unpaid continued to accrue during the welfare experiences of our sample families. Given the average amount of indebtedness among our families ($1520.50) when they went on welfare, the customary annual interest rates of 18 per cent on revolving credit accounts and some 24 per cent on small loans could increase the debt problems of our sample families sizably over a period of a year or more.

Not surprisingly, the interviews among our sample families revealed little knowledge of interest charges involved in their credit behavior. Nor as a group did they appear to have records of their credit contracts or payments. While there would seem to be grounds for suspecting fraud on the part of creditors in some of the cases, there was not one attempt in the 168 garnishments admitted by our families to contest the legal actions taken against them. Moreover, there appeared to be a pattern among a number of the families to continue doing business with the same creditors who had been garnisheeing their wages. Asked about this, one husband replied, "I didn't know I could go anywhere else without money." Another replied, "Where else can we make the same payment each week and pick up a new item every time the old bill's about paid up without any change in payments?" With deep resignation one woman sighed, "The only way out of this dollar-down-and-two-dollars-a-week living for people like us is to send us back South." A husband summed up the situation for our sample families with the challenge: "If you were broke most of the time and wanted things for your kids like everybody else, and you kept getting these letters saying, 'We have money waiting for you to pay for your purchase on time,' what would you do?"

CONCLUSIONS

Sociologists proclaim that the first step in solving a social problem is creating an awareness that a problem exists. The foregoing comments represent a few of the more pertinent findings of a modest interview survey which suggest that the debt problems of public welfare families constitute another in the mounting list of neglected consumer problems of low-income families needing the attention of consumer specialists.

A few tentative conclusions from this exploratory survey would seem apparent. They might serve as propositions for more sophisticated research efforts. First, debt problems appear to be an integral part of the money problems of a number of welfare families. Second, budgets devised for individual welfare families which ignore installment credit obligations are doomed to failure. Third, departmental policies voiding use of welfare funds to repay creditors are nonfunctional as long as the creditor, the more power party to the credit contract, is not a party to the non-payment commitment. Fourth, welfare money is being used both directly and indirectly to pay off a small number of "easy credit" merchants and consumer finance companies. Fifth, a small number of "easy credit" merchants and consumer finance companies are both soliciting and harassing welfare clients and jeopardizing their financial rehabilitation. Sixth, garnishments shortly following a return to work are a constant threat to former welfare recipients and in part are a consequence of departmental policy not to deal realistically with the installment credit problems of its clients.

Obviously, since the determining of public welfare policy is a local responsibility, a survey of policies and programs on the repayment of debts and within public welfare departments across the nation would be a helpful project in itself. Even though conditions and practices in a given locality might differ, it may be helpful to enumerate some questions suggested by the Milwaukee situ-

ation for consumer-oriented professionals to ponder in anticipation of offering their local welfare departments assistance in this area:

1. If the debt problems of clients are not being given proper attention presently, what is involved by way of retraining the staff to deal with them adequately?

One of the frustrations here is the high turnover of casework staff among welfare departments generally. "One-shot" training programs of staff have little lasting value under such circumstances.

2. What is required to encourage welfare families to solicit the help of departmental workers with their credit problems?

Unquestionably, policies requiring clientele to abstain from any involvement in the Buy-Now-Pay-Later world in which they live reinforces suspicious feelings among recipients that welfare workers represent the "enemy." The turnover of caseworkers on an individual case over a short period of time decimates chances of a worker establishing a relationship conducive to encouraging recipients to confide in them.

3. If local welfare policy prohibiting debt repayment is inoperative, along what lines might one be drawn which would be more functional and effective?

A minimum requirement would be for the department to solicit agreements from creditors to "freeze" both payments and the accumulation of interest while a family is on welfare.

4. What can be done to discourage the limited number of "easy credit" merchants and small loan companies from preying upon welfare clients?

In Milwaukee five credit clothiers and furniture stores and five consumer finance companies were responsible for almost all of the problems the welfare families in our sample experienced. The assignment of a staff person to review the legitimacy and accuracy of debts claimed by these operators might curtail their abusive tactics considerably.

5. What role might the welfare department play in protecting clients from excessive legal actions following the closing of their cases?

Public revelations by welfare departments of the amount of tax revenue in the form of welfare funds being drained off directly or indirectly to satisfy a small group of unscrupulous creditors might provide the "education" needed to move the general public to humanize state garnishment laws.

It is gratifying that public awareness of the problem of indebtedness among public welfare clientele apparently has already resulted in measures to cope with it in some areas. Minnesota, for example, boasts the only state garnishment law that prohibits the garnisheeing of public welfare recipients within six months of the closing of their cases. The California State Department of Social Welfare professes a seven-step program to deal with the indebtedness problems of its recipients: (1) help and advice with budget planning, (2) consultation with creditors, (3) referral to appropriate community agencies, (4) debt adjustment services, (5) group counseling, (6) money payments to clients at one or two week intervals, and (7) modified payments to creditors periodically reviewed.[4] Equally apparent is the need for more attention to this problem on a general basis by consumer specialists and welfare departments across the country.

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[4] See Ruth M. Wilson, "Strengthening Services Through Money Management Counseling," in *Public Welfare,* Volume 20, Number 6, April, 1962, page 96.

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SEPTEMBER 9, 1966.

MR. JOSEPH BALDWIN,
Director, Milwaukee County Department of Public Welfare,
Milwaukee, Wis.

DEAR MR. BALDWIN: I am writing to express the appreciation of our Center for Consumer Affairs for the cooperation of your department in making possible the recent exploratory survey of the installment credit problems of fifty Milwaukee families with public welfare histories. The five second-year graduate students at the UWM School of Social Welfare, who undertook this project under my supervision to meet their thesis requirement for graduation, also appreciate the genuine cooperation of your personnel in making the necessary data available. As you are probably aware, a copy of their group-thesis is on file in your department.

Because this project has been a pioneering one, probably the first of its kind among welfare clientele, I thought you might appreciate some summary comments on our findings. We trust they might be helpful in reviewing present departmental policy in an area of life among low-income families that until recently has been largely overlooked. Traditionally it has been assumed that, because of their low incomes and the seemingly high risks involved, installment credit is not available to poor families and accordingly is not one of their major problems.

This notion is no longer tenable. Certainly a lot of credit for this change of insight nationally should go to David Caplovitz for the revelations in his book, *The Poor Pay More.* The problem of installment debt among low-income families today is a frequent topic of the daily press. Undoubtedly, revelations emerging from the ghetto riots in a number of cities as well as insights gained in the course of a number of anti-poverty projects have been responsible for the increasing attention the problem is receiving. For example, as recently as August 16, 1966, the *Wall Street Journal* gave page-one, column-one billing to the subject. Its story on "ghetto merchants" covered more than two columns. Today, then, it is common knowledge that installment credit plays a vital role in the life of low-income families.

It was this awareness that initially aroused my curiosity about present departmental policy requiring welfare clients to sign a formal statement which, in effect, prohibits them from using welfare payments for the repayment of installment purchases. I am referring to the commitment not to have "used any of the money granted me by the Department of Public Welfare for any item not included in the relief budget." As a taxpayer, I can appreciate the intent of this policy. Pragmatically, I became interested in the consequences of this policy for the clients, the welfare department, and taxpayers as well.

Some of the questions raised by this policy, and in turn pursued in our pilot study, were along these lines: Since installment credit is essentially a contractual relationship between a debtor and a creditor, what happens when the former subsequently commits himself to another "contract" with the Welfare Department, which in effect tables his commitment to this creditor? Since a corresponding commitment not to expect payment is not solicited from the creditor, how does the latter react to the welfare client's commitment? Does the creditor accept the situation and wait passively in the wings until the welfare client's case is closed? If not, how does the client respond to his requests for payment, caught between two conflicting obligations? What happens in terms of penalties for late payment and accumulating interest to the unpaid balance of the debt while the family is on welfare? If the client is on welfare for any length of time, does the increased obligation resulting from added interest and penalties awaiting him

upon close of his case jeopardize his post-welfare adjustment? How soon after discharge from welfare does the creditor exact payment? Does the garnishment of wages from his employer jeopardize his job or reduce his income to such a low level that additional supplementary welfare funds are required to provide the family with a minimal level of subsistence? Staff-wise, to what extent are welfare workers alert to these aspects of a case, trained to handle them, and solicited by the clients to help resolve them? Summarily, does the department have more of a vested interest in the credit problems of its clients than its present program and policies would suggest?

Given the scope of time and effort that could be applied to this project, we decided to interview only those general relief recipients who had been garnisheed by merchants or small loan companies since leaving welfare for reason of obtaining jobs during the months of October, 1964 or May, 1965. This approach enabled us to get directly to the hard-core families experiencing the type of problems about which we were concerned. Almost one in four of the 634 families whose cases were closed in Milwaukee County during these months had been involved in garnishments or principle actions by the time of our survey. Limiting ourselves to plaintiffs who were merchants or small loan companies, we came up with 50 families who could be located and interviewed.

Our families reported an average debt-load of $1,520.50 while on welfare, an astronomical amount for families whose loss or lack of income necessitated welfare aid. Compounding their problems, and probably a significant factor in explaining their indebtedness, was the large size of their families. The median number of children per family was 7.1. The average number was 4.96, compared with 1.3 for Milwaukee as a whole. Moreover, 79 per cent of the 248 children among our families were under 12 years of age, which means that the more expensive years of child care are still before them, a disturbing prospect for marginal families under any circumstances.

Three out of four of our families reported that creditors had tried to collect payments while they were on welfare. For almost half of these families, ignorance of the welfare status could not be used as an excuse for attempting collections since their creditors had been informed previously that they were on welfare. As a matter of fact, more than one in five of the families reported merchants or lenders offering them additional credit while they were knowingly on welfare. One family was emphatic in insisting that one "easy credit" furniture store specializes in extending credit up to $500 to ADC families. There was some indication of families being lured into making credit purchases while on welfare, only to have the creditors, aware of the client's no-credit pledge, threaten afterward to expose the family to welfare authorities unless they used welfare funds to repay them.

Over a third of the families admitted that they made full or partial payment to creditors while on welfare to "get them off their backs," and a third of this group made payments of $8 per week. The average payment was slightly less than $21 per month.

Asked if their welfare worker had been of any assistance with their debt problems, 45 of our families replied in the negative, four in the affirmative, and one refused to answer. Fifteen of the families had asked for help. On the positive side, one worker interceded to get the harassing creditor to leave the family alone. On the other hand, another worker's response to a request for help was that they should "eat more beans and rice while you're having troubles." Of the majority of families who did not solicit help from their workers, 15 did not because they assumed from past experience none would be forthcoming, 12 felt their credit problems would be of no concern to welfare, and the balance felt it would be foolish to ask for help in view of the departmental policy on credit payments.

Almost a quarter of the families were garnisheed by creditors within two to four weeks after leaving the welfare rolls and returning to work. Another quarter was garnisheed within 90 days. In slightly more than half of these cases, the plaintiffs were "easy credit" merchants within the ghetto and the balance, with one exception, were small loan companies.

For our fifty families, garnisheed wages appeared to be intimately associated with their welfare status. For some, garnishments proved to be the final straws that broke the backs of their economic independence and put them on welfare, either through loss of job or loss of any incentive to continue working. In the words of one family, "The money left in the paycheck after garnishment wasn't enough for food money for a family our size." For other families garnisheed wages to pay creditors reduced their paycheck to the point where they qualified

for supplementary aid from welfare. "If I feel any strain I go down to welfare and they make up the difference," was the way one father expressed it. Among civil service workers particularly, there appeared to be a possible pattern: wage deductions are made to pay creditors under wage assignments and the workers are sent to welfare for supplemental aid to meet their family's basic needs to make up the creditor's "take."

This use of public funds one step removed to satisfy creditors is a problem that certainly deserves further attention.

By the time of our interviews, one of seven of our families had gone through bankruptcy since leaving welfare. Since bankruptcy, over half of thes families were already experiencing new debt difficulties and the balances were making payments on old debts covered in the bankruptcy that had been reaffirmed. In all probability these families had gotten themselves into new difficulty to retain or regain furniture and appliances that would have been subject to repossession under bankruptcy proceedings.

Repossession of merchandise was experienced by about a fourth of the families while on welfare. In two-thirds of the cases the repossession cleared the account. Unfortunately, no information was obtained on the amount of money already paid for the various items by the time of their repossession. It would not be unusual to discover in such cases that payments made exceeded the initial value of the merchandise repossessed. The other third of the families experiencing repossession of goods while on welfare were less fortunate. They were hit with deficiency judgments and their wages garnisheed shortly after they obtained new employment. One family reported being garnisheed for a $700 balance due on a TV after it had been repossessed. Intertwined in all their repossession and bankruptcy experience was another credit difficulty; namely, the co-signing of a loan for another party. Roughly a third of our sample had served as co-maker of a loan for another, most likely thinking they were vouching for the character of a friend or relative, and three out of four of this group had been garnisheed at least once for the defaulted debts for which they had co-signed.

Almost half of our families felt that the balances they owed their creditors at the time they went on welfare were higher by the time they went off welfare. A little over 10 per cent of the sample found their debt-balance to be about what they had expected. One family reported a balance of $600 due on a small loan of $300 contracted before their welfare experience. Apparently, the rest of the sample had insufficient knowledge of their situations upon which to base an opinion on the matter. There is every reason to believe that interest on the debts left unpaid continued to accrue during the welfare experiences of our sample families. Given the average amount of indebtedness among our families ($1,520.-50) while they were on welfare, the customary annual interest rates of 18 per cent on revolving credit accounts and some 24 per cent on small loans could increase the debt problems of our sample families sizeably over a period of a year or more.

Not surprisingly, our interviews among our sample families revealed little awareness of interest charges involved in their credit purchasing or borrowing behavior. Nor as a group did they appear to have records of their credit contracts or payments. While there would seem to be grounds for suspecting fraud on the part of creditors in some of the cases, there was not one attempt in the 168 garnishments admitted by our families to contest the legal actions taken against them. Moreover, there appeared to be a pattern among a number of the families to continue doing business with the same creditors who had been garnishing their wages. Asked about this, one husband replied, "I didn't know I could go anywhere else without money." Another replied, "Where else can we make the same payment each week and pick up a new item every time the old bill's about paid up without any change in payments?" With deep resignation one woman sighed, "The only way out of this dollar-down-and-two-dollars-a-week living for people of my race is to send us back South." A husband summed up the situation for our sample families with the challenge: "If you were broke most of the time and wanted things for your kids like everybody else and you kept getting these letters saying, 'We have money waiting for you to pay for your purchase on time,' what would you do?"

While the foregoing comments represent only a few gleanings from a modest survey of 50 families, it would appear reasonable to come to a number of tentative conclusions upon which a framework for developing a more comprehensive welfare program to cope with the problem discussed:

1. Debt problems are an integral part of the money problems of a number of welfare families and require the assistance of their workers in resolving them.

2. There is some suggestion that the present policy's implications for debt payments are in part responsible for the fact that ninety per cent of the fifty families have not shared their debt problems with their workers.

3. In spite of the present policy, welfare funds are being used both directly and indirectly to pay off a small number of easy credit merchants and small loan companies, particularly in the inner city.

4. Present welfare policy voiding debt repayment is inoperative as long as the creditor, the more powerful member of the credit contract, is not a party of the non-payment commitment.

5. There is considerable evidence that a relatively small number of "easy credit" merchants and small loan companies are both harassing and soliciting welfare clients and thereby jeopardizing the department's program for these clients sufficiently to warrant the special attention of the department.

6. Garnishments, shortly following the close of welfare cases, resulting from overdue debts are undoing the work welfare has done for the families involved.

Once you have had an opportunity to digest this report, we at the Center for Consumer Affairs would be happy to meet with you to consider ways by which we might be of assistance in helping your office develop a more comprehensive program on client debt problems. The following questions might suggest some areas for discussion:

1. If debt problems are to be given more attention by the department, what is involved by way of retraining of staff to deal with them?

2. If the present policy on debt repayment is inoperative, along what lines might one be drawn which would be more functional and effective?

3. What can be done to discourage the small number of easy credit merchants and small loan companies from preying upon welfare clients?

4. What is required to encourage welfare clients to solicit the help of departmental workers with their credit problems?

5. What role might the department play in protecting clients from excessive legal actions following the closing of their cases?

Sincerely yours,

MILTON J. HUBER,
Associate Professor, Center for Consumer Affairs.

ANALYSIS OF CIVIL COURT FILINGS OF LOS ANGELES MUNICIPAL COURT

I. INTRODUCTION

Attachments by way of wage garnishments represent a large percentage of the problems brought to the offices of those assisting the indigent.

This and obviously related problems motivated a group to run a search of the Civil Court files of the Los Angeles Municipal Court (one of twenty-six Municipal Court Divisions in Los Angeles County) in relation to the nature of suits filed.

There was no preconceived idea as to what such a search might reveal; but, in part, it was thought that such a search would confirm in most respects the findings of a study by George Brunn, "*Wage Garnishment in California: A Study and Recommendations*", December 1965 California Law Review, Vol. 53, No. 5, and would assist this Committee in consideration of AB 457.

II. COMPILATION OF CIVIL FILINGS

Cases filed in the Los Angeles Municipal Court (fiscal year July 1 to June 30) were:

	Total cases	Percent
1963–64	95,577	[1] 82
1964–65	102,163	[1] 85
1965–66	107,616	[1] 84

[1] These percentages of cases were contractual in nature; the balance covers auto accidents, conversion of properties, unlawful detainer, mechanic liens, and related "wrongs."

Source: Los Angeles municipal court public reports.

During the corresponding period of time, the Los Angeles County Marshal's Office made attempts to levy on debtors, or persons holding debtor's funds as follows:

1963–64	108,201 times.
1964–65	114,972 times.
1965–66	127,762 times.

These figures are maintained by the Marshal's Office, but whether such attempt to reach the debtor's fund were successful is not recorded for percentage determination.

III. RANDOM SAMPLING OF CIVIL FILE

The cases filed in the Los Angeles Municipal Court during the first quarter of 1965 indicated:

	Cases	Percent
Contract action	21,786	80.5
Torts (auto accident)	3,031	11.2
Unlawful detainer	1,266	4.5
Other		3.8
Total cases filed	27,080	100.0

Source: Los Angeles municipal court public records.

A. The random sampling of this quarter[1] indicated that 84% of the cases *reviewed* were based on contractual obligations; and, of these, 78% were filed by assignees. This would indicate that of 21,786 cases filed, 17,050 were filed by assignees,[2] *or 63% of the "total" actions filed.*

B. The random sampling as to the amount involved in the lawsuit indicated that, in those actions based on contract, 36.5% were for less than $200.00 (Small Claims jurisdictional amount); therefore, 7,915 cases filed in this period were for less than $200.00 (approximately 30% of the "total" cases filed in the Municipal Court).

IV. DISPOSITION OF CIVIL FILE

The following statistics resulting from this random sampling of this period indicates the following *as applied to the contract actions:*

1. Answers to the complaint were filed in only 8% (or 1,743) of the cases.
2. In 50.5% of the cases (or 11,002), judgment against the defendant was entered by default, entry being made by the Clerk of Court.
3. Of 21% of the writs that indicated a return on the levy of attachment or execution:

57% were on wages
21% were on bank accounts
18% were on personal property

However, it is difficult to reconcile this small number in relation to the total handled by the Marshal's Department.

V. RELEASE OF ATTACHMENT

While a portion of the Code relative to the release of an attachment by the posting of a bond or other security is a possibility, no such release is recently a matter of record. Also, claims for exemptions from attachment are very infrequent.

VI. CONCLUSIONS

A. Eighty to 85% of the actions filed in the Municipal Court are of a contractual nature.

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[1] The random sample was taken for the months of February, March, April, 1965; based on a random numbers table. This particular period was taken because the grouping was convenient in location to working space. Two persons worked independently. One examined 215 cases, the other 265 cases; and, when these two studies were compared, the difference in results was minimal. From this, it was concluded that the samplings were representative of the whole, even though less than 2% of cases filed were reviewed.

Further, a brief corresponding check of the same period for 1966 indicated that the results were in accord with what might result from a more extended study.

[2] Assignees for the most part are collection agencies.

B. Of these contractual cases, 75% are filed by what is commonly known as collection agencies (⅔rds of the total cases filed).

1. That in over one-half of these case judgment was entered by default.

2. That in only 8% were the defendants able or willing to file an answer.

C. That 30% of the cases filed in the Los Angles Municipal Court would be filed in the Small Claims Court, except that an assignee cannot sue in such court, nor will a writ of attachment be issued.

D. It is a fair conclusion that the results of the examination covered herein substantiates the article referred to by George Brunn for the San Francisco area.

(Mr. Elmore Whitehurst submitted the following articles for the record:)

[Journal of the National Conference of Referees in Bankruptcy, July 1966]

SCHLOCKMEISTER'S JUBILEE: BANKRUPTCY FOR THE POOR

By Ralph C. Brendes and Lawrence H. Schwartz

Editor's Note: Mr. Brendes and Mr. Schwartz are third year students at the University of Chicago Law School. Mr. Brendes is President of the Edwin F. Mandel Legal Aid Association and was a member of the Student Advisory Committee for the Law School's Conference on Consumer Credit and the Poor, November 14 and 15, 1965. A resident of Alton, New York, Mr. Brendes has a B.A. degree from Colgate University.

Mr. Schwartz was Chairman of the Conference on Consumer Credit and the Poor. He is a resident of Chicago, Illinois and did his undergraduate work at the University of Michigan.

This paper was originally written for a seminar on Legal Problems of the Poor and then presented at the Law School's Consumer Credit Conference.

The authors state: "The term 'Schlockmeister' defies precise translation. The authors are prone to refer to it as 'an old French word emanating from pre-Carolingian days'. In fact, the word has Yiddish origins and is best defined as 'Shoddy merchant', 'Shady operator', et cetera."

"At the end of every seven years you shall grant a release. And this is the manner of the release. Every creditor shall release what he has lent to his neighbor, he shall not exact it of his neighbor, his brother, because the Lord's release has been proclaimed."—Deuteronomy 15: 1–2

Every seventh year in Biblical times was called a "Jubilee Year." Today, those who are unable to budget their debt payments can find their "Jubilee" in the Bankruptcy Act. The Supreme Court has said that the purpose of bankruptcy is to relieve "the honest debtor from the weight of oppressive indebtedness and [to] permit him to start anew free from obligations and responsibilities consequent upon business misfortune."[1] As applied to the poor, however, bankruptcy does not seem to offer a bright prospect for effective relief. Two circumstances tend to restrict its effectiveness, particularly for the poor; one involves the reaffirmation of discharged debts by the bankrupt and the other relates to creditors' attempts to collect discharged debts on technical grounds.

The poor bankrupt attempting to survive the high cost of urban existence is sometimes forced back into debt shortly after going through bankruptcy; often he is peculiarly susceptible to the so-called "voluntary" affirmation. The unscrupulous loan company or furniture dealer whose debt supposedly was discharged in bankruptcy will approach the bankrupt and urge him to reaffirm his old debts in return for a renewal of credit or because it was not its credit practices which precipitated his bankruptcy. In no time the creditor has the bankrupt back in debt with the additional advantage of having a six year period in which to collect.[2]

Another side of the reaffirmation problem is the debtor who inadvisedly went through bankruptcy. The result here is the same as discussed above, in that little is accomplished beyond the loss to the bankrupt of the right to another bankruptcy for a period of six years.[3] In a typical situation a "schlock" merchant will convince a debtor to go through bankruptcy, often recommending a shady lawyer

[1] *Williams* v. *United States Fidelity and Guarantee Co.*, 236 U.S. 549, 554–5 (1915).

[2] 11 U.S.C. § 35(c) (1964). We do not mean to imply that all reaffirmations are done involuntarily by the debtor. Some debtors for their own reasons do desire to reaffirm certain debts. (See p. 77.)

[3] *Ibid.*

who is actually tied in with the operation; the debtor is persuaded that he will be able to buy the desired (but probably shoddy) merchandise and to free himself of all his other debts at the same time. In other situations, a debtor will in one way or another find his way to one of the so-called "wholesale" bankruptcy lawyers who specialize in volume bankruptcy. The lawyer, of course, earns himself a fee (ranging anywhere from $150 to $400) which is secured by a wage assignment and reaffirmed after bankruptcy. In many cases, a scrupulous attorney or debt counsellor might have worked something out with the creditors without wasting the debtor's right to a discharge in bankruptcy.[4]

With post-discharge actions, creditors may be able to force bankrupts to pay discharged debts which have not been reaffirmed by the bankrupt. Much of this is due to the nature of the bankruptcy decree. The federal court determines the debtor's right to a discharge, but the state court has jurisdiction to determine what debts were discharged.[5]

A creditor whose debt was scheduled in the bankruptcy petition in the federal court may go into the state court and sue on the debt, alleging that the debt was not discharged under the Bankruptcy Act. Such suits are frequently brought on the ground that a loan was obtained under false pretenses for want of full disclosure of other outstanding debts. In other cases, a creditor may go into the state court alleging that the debt was the result of a "wilful and wanton" tort judgment.[6] If the creditor wins, his debt is exempt from discharge. Since the discharge decree is an affirmative defense which is waived if not pleaded in the state action, unscrupulous creditors can, and have been known to, take advantage of state implementation of the bankruptcy decree by prosecuting actions in state courts on debts they know to have been validly discharged. The creditor often wins anyway since: (1) the bankrupt, for one reason or another, may never receive the summons and therefore not appear; (2) the bankrupt, duly notified of the post-discharge proceeding in the state courts, may fail to appear because of his misunderstanding of the nature and effect of his discharge in bankruptcy; (3) the bankrupt's lawyer may have indicated to the client that he will take care of any post-discharge action, but after a series of continuances, the lawyer withdraws from the case with no notice to the bankrupt.[7] In any event, these creditors have nothing to lose but the state filing fee, because it is highly unlikely that the bankrupt will institute a suit for malicious prosecution or a related action.

In most cases, the problem is not the default judgment, but rather the leverage which the post-discharge procedure gives the creditor in collecting old debts. Rather than incur the trouble and expense of defending in the state court, or risk losing his job because of wage garnishment, the bankrupt will often settle

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[4] We do not mean to imply that all bankruptcy lawyers are *a fortiori* unscrupulous persons uninterested in the welfare of the individual debtor. The attitude of some of these lawyers is important to understand. Some sincerely believe that what they are doing is in the best interest of the debtor. Many attorneys believe that because the state gives so many tools of harassment to the creditor while not effectively allowing the debtor to assert the defenses of unfairness or failure of warranty, the debtor should have no qualms about utilizing bankruptcy whenever possible. These lawyers have a philosophy about their work above and beyond simply "bankruptcy as a buck."

[5] *Ciavarella* v. *Salituri*, 153 F. 2d 343 (2nd Cir., 1946); *In re Siegel*, 164 F. Supp. 709 (D.C.N.Y. 1958).

[6] 11 U.S.C. § 35 (1964):

(a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as (1) are due as a tax levied by the United States, or any State, county, district, or municipality; (2) *are liabilities for obtaining money or property by false pretenses or false representations, or for obtaining money or property on credit or obtaining an extension or renewal of credit in reliance upon a materially false statement in writing respecting his financial condition made or published or caused to be made or published in a manner whatsoever with intent to deceive, or for wilful and malicious injuries to the person or property of another*, or for alimony due or to become due for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversations; (3) have not duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; (4) were created by his fraud, embezzlement, misappropriation or defalcation while acting as an officer or in any fiduciary capacity; (5) are for wages which have been earned within three months before the date of commencement of the proceedings in bankruptcy due to workmen, servants, clerks, or traveling or city salesman, on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; or (6) are due for moneys of an employee received or retained by his employer to secure the faithful performance by such employee of the terms of a contract of employment. (Emphasis is ours).

[7] Loan company attorneys, if they feel a postdischarge action went to default judgment due to an oversight by the bankrupt's attorney, will often reopen the case at the attorney's request and give the bankrupt his day in court.

with creditors on debts already discharged in bankruptcy. Because all his other debts have been discharged, the bankrupt is more amenable to settling with "just this one" creditor.

A caveat is in order before proceeding further. This paper will not consider the moral, social or economic implications of bankruptcy as a remedy for the debtor. This paper proceeds on the assumption that, as long as bankruptcy has been designed to give relief to an overburdened debtor, it should be made as effective as possible, regardless of the intelligence or economic class of the debtor. Others may question the advisability of bankruptcy as a means of debtor relief; we proceed on the assumption that given bankruptcy as a remedy, how can it be made more effective.

EXISTING LEGAL REMEDIES

What legal theories and strategies are available to limit bars to the effective use of ordinary bankruptcy by the poor man? Is it possible in the federal courts to have the Referee in Bankruptcy list the debts indicating which are discharged, and which are not? In a few cases this has been done; but, in the cases as they are now argued, this approach has been limited.

Indicative of the very few cases where this method has been used is *Harrison* v. *Donnelly*,[8] and *In re Tamburo*,[9] where the federal courts exercised equitable jurisdiction under § 2 (15) of the Bankruptcy Act[10] to implement the bankruptcy discharge by exempting certain debts in what is called a partial discharge. Section 15 of Chapter 2 provides that the court may "make such orders, issue such process, and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this Act . . .".[11] The partial discharge in these cases was granted at the behest of a creditor, and specifically listed only those debts which had *not* been discharged. In these cases, the debt was a tort judgment which was easily demonstrated to have been "wilful and wanton" by the trial record. The courts reasoned that the bankrupt had already had his day in court on the judgment in question and that nothing would be gained by forcing the creditor to relitigate the matter in the Bankruptcy Court. We have found no cases where this approach has been taken in the absence of either the creditor's request or a final determination of the matter in some other court.

This same equitable argument could be made for the debtor; however, the two cases seem to be distinguishable. There is less justification for the exercise of equitable jurisdiction to determine, in the discharge, that a given tort was *not* wilful and wanton. The bankrupt need *not* be the moving party in the state court to achieve his end, no post-discharge action on a debt. Therefore, the equity power of the court is arguably more justifiably exercised when one party must incur additional expenses to receive something which he already has a right to, as in the creditor's case.

In any event, this theory probably has no application in limiting post-discharge actions in the numerous and flagrant "false pretenses" suits. Final adjudication on the false pretense issue is not possible before bankruptcy; indeed, the question is not now even raised until the state post-discharge proceedings. The federal court cannot rely on a court record, but would be forced to conduct a hearing on the question before handing down the decree. Although something like a hearing is conducted for a temporary restraining order under § 11(a) of the Act,[12] there is no precedent for a federal court binding a state court and exercising its equitable powers in this way.

The foregoing reflects the present view of bankruptcy procedures. An argument is possible, however, under existing law, which would insure that the final decree of the court could not be attacked by post discharge actions. Under 11 U.S.C. § 11(a) (15) (1964),[13] the bankruptcy court could be asked to stay final approval of the bankruptcy discharge for sixty days. Any scheduled creditor claiming that

[8] 153 F. 2d 588 (1946).
[9] 82 F. Supp. 995 (1949).
[10] 11 U.S.C. § 11(a)(15) (1964).
[11] *Ibid.*
[12] Sec. 11a (11 U.S.C. § 29(a) (1964):
A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition by or against him, shall be stayed until the adjudication or dismissal of the petition . . . .
[13] See notes 10 and 11, *supra*, and accompanying text.

his debt was exempted from discharge under 11 U.S.C. § 35 (1964),[14] would have to file suit in the state courts during this period. After the sixty days, a permanent injunction would be issued under 11 U.S.C. § 11(a) (15) (1964) enjoining scheduled creditors who had not yet filed suit from ever suing the debtor on these scheduled debts.

When all the state actions reached final adjudication, the referee would then have complete trial records before him and could hand down a partial discharge. The partial discharge would list all debts discharged, and all debts exempted. The bankrupt would then know with certainty which debts were specifically exempt from the bankruptcy discharge. The accompanying injunction could be used to prevent any future suit on debts listed as discharged in the bankruptcy decree.

The bankruptcy court possesses the requisite equitable power to implement such partial discharge.[15] The court must be convinced to take notice of post-discharge creditor abuses and must be shown that this type of bankruptcy proceeding would be implementing the purpose of the Bankruptcy Act. In addition, creditors would not be deprived of their rights under the Act. It is just as easy for a creditor to determine whether he has a false pretense action at the time the bankruptcy petition is filed as it is for him to make this determination after the decree has been entered. In either case, all he usually does is compare the bankruptcy schedule with the debts listed on the loan application filled in by the debtor, in order to see if the debtor had listed all his outstanding debts. If the creditor decides that he has a cause of action for false pretenses, he has sixty days to file suit. If he does not file, the debt is discharged and he is enjoined from ever suing the debtor on that debt. Giving a creditor more than sixty days to file suit is unnecessary; it only enables the unscrupulous creditor to "sandbag" and file suit several years later hoping for a default judgment.

There is clearly no precedent permitting this use of partial discharge under 11 U.S.C. § 11(a) (15). There is, however, no case precedent against it.

Assuming a bankruptcy court would be amendable to this argument, the creditors could legitimately contend that such an order is beyond the extent of the bankruptcy court's equitable power. 11 U.S.C. § 11 (a) (15) talks about enforcing "the provisions of *this act*."[16] "This act," the Bankruptcy Act, does not control state post-discharge actions. Therefore, it could be argued that an injunction against post-discharge actions issued after creditors were given 60 days to file suit is invalid. The power of the bankruptcy court to enjoin state post-discharge actions appears, under present case law, to be limited.[17] Legislation may be the most feasible method to deal with these problems.[18]

A more fruitful use of federal court jurisdiction is for the post-discharge injunction. A bankrupt, pursued in the state court by a creditor whose debt was discharged in bankruptcy, petitions the federal court to restrain the suit or to prevent execution of a post-discharge judgment. To the extent that it is available, this approach is not necessarily the most productive way to defend post-discharge actions, because many lawyers *are* quite successful defending these suits in the state courts. The federal forum, however, is arguably more receptive to the correct implementation of the bankruptcy discharge. The federal court is the expert on bankruptcy law, while the state court, not having expertise in this area, may misinterpret the effect of a bankruptcy decree. In addition, the federal referee is already familiar with the facts of a case; he may have considered the circumstances surrounding a given debt in issuing a temporary restraining order at the time the bankruptcy was filed.

To achieve uniformity in the administration of bankruptcy, post-discharge actions seem logically to belong in the federal courts. As the discharge is a federal decree, it is only sensible to let the federal courts interpret it. There is no countervailing state interest at stake here, particularly since the federal courts are required under the doctrine of *Erie v. Tompkins* to apply the state law anyway on questions to which it is applicable. Continued federal jurisdiction will deter the creditor from picking his forum in the state and maintaining post-discharge actions of a dubious nature. In this way the policy of the Bankruptcy Act could be more effectively realized.

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[14] See note 6, *supra*.
[15] 11 U.S.C. § 11(a) (15) (1964).
[16] Emphasis ours.
[17] *Local Loan Co.* v. *Hunt*, 292 U.S. 234 (1934), see notes 23–25 *infra*, and accompanying text.
[18] For a number of years, Congressman Celler of New York has introduced a bill, last introduced as H.R. 1742, 87th Cong., 1st Sess. (1961), giving the bankruptcy courts exclusive jurisdiction over the dischargeability of debts.

The arguments against such an expansion of the federal jurisdiction must not be overlooked. An injunctive determination in the federal court would probably deny the parties a right to a jury trial which they now can have in the state courts. Secondly, the so-called expertise of the federal courts is a straw argument, because for the most part the post-discharge actions require factual determinations under state law of cases involving allegations of "false pretenses" and "wilful and wanton" torts. Because these kinds of cases are governed by state law, the federal courts would be forced to interpret state law—and if anything state courts should be the primary interpreters of state law.

Thirdly, other critics have said that the use of equitable federal remedies is unnecessary, because these same remedies and more are available in the state courts.[19] Some states allow tort actions and damages for abuse of process and injury to credit from wrongful attachment.[20] Other states permit the state courts to enjoin improper prosecution in the form of repeated actions or threats of suit on an unfounded claim by what is known as a "bill of peace." The problem with the various tort actions is that they are difficult to prove and rarely if ever are employed as a remedy against post-discharge harassment. The use of equitable state remedies is always a possibility but is apparently used in only a few states, with the bankrupt having to prove repeated harassment in many of them in order to obtain equitable relief.[21]

The annotation in 54 A.L.R. 451 states that in many jurisdictions the aggrieved bankrupt must show malice to establish a case for damages. It is hard to imagine a poor wage-earning bankrupt incurring the expense involved to initiate one of these tort suits against an offending creditor, unless he could get attorney's fees if he established his case. Such harassment by creditors is reprehensible and should be discouraged. Awarding attorney's fees on a punitive damages theory might provide the necessary incentive.[22]

A fourth practical objection to expanded federal jurisdiction may yet be the hardest to overcome. The psychological effect on the referee who would hear the post-discharge actions may tend to vitiate any inherent commitment the federal courts have to the goals of the Bankruptcy Act. Referees handling million-dollar corporate bankruptcies might look at wage-earner bankruptcies as "small potatoes," no matter how large the bankruptcy.

What is the legal justification for federal injunctive power in post-discharge state proceedings? The federal courts have the discretion to enjoin post-discharge proceedings in state courts. In *Seaboard Small Loan Corp.* v. *Ottinger*,[23] the court held that the federal court had equity power under § 2(15) of the Bankruptcy Act[24] to prevent the circumvention of a discharge decree and prevent creditor harassment of discharged bankrupts in state courts. The Supreme Court in *Local Loan Co.* v *Hunt*,[25] clarified the existence of this ancillary equity jurisdiction in the federal courts saying that jurisdiction should be exercised only under "unusual circumstances." The "unusual circumstances" in *Local Loan* were that the bankrupt would otherwise have had to pursue a long and expensive course of litigation in the state courts of Illinois, through successive appeals, in order to challenge the Illinois state court interpretation of wage assignment liens as non-dischargeable debts. The remedy of appeal through the state courts before coming to the federal courts was entirely inadequate, because of the wholly disproportionate trouble, embarrassment, expense, and possible loss of employment involved.[26] Equitable jurisdiction was necessary to implement the clear and unmistakable policy of the Bankruptcy Act.[27]

Local Loan is the last pronouncement of the Supreme Court on the equitable jurisdiction of the federal courts in post-discharge bankruptcy proceedings. As one might imagine, the history of the *Local Loan* doctrine has been a circuit by circuit, district by district, interpretation of the "unusual circumstances" rule. For the most part, this history is best characterized as an emasculation of *Local*

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[19] Cf. 30 Va. L. Rev. 531, 541–2 (1944).
[20] *Ibid.*
[21] *Id.* at 542, note 53.
[22] See Philip Moore, "Individual Affirmative Actions," a student workshop paper presented at the Conference on Consumer Credit and the Poor, University of Chicago Law School, Nov. 1965.
[23] 50 F. 2d 856 (4th Cir., 1931).
[24] 11 U.S.C. § 11(a)(15) (1964).
[25] 292 U.S. 234 (1934).
[26] *Id.* at 241–2.
[27] *Id.* at 244.

Loan by restrictive interpretations of "unusual circumstances." In light of this observation, the question becomes: when should one go to the federal court and what allegations must be made to convince the court to invoke *Local Loan?*

Federal courts have exercised equitable jurisdiction at all points in the state post-discharge proceedings.

"The safest procedure is for the debtor to seek injunctive relief while the creditor's suit is still being prosecuted against him, but he may also be successful in barring an execution on a default judgment. In at least four instances, however, injuctions have been issued against the enforcement of the creditor's state court judgment even after the bankrupt had appeared in the state suit to assert his bankruptcy as a defense. In spite of strong opinion on the contrary, therefore, the principle of res judicata can be turned aside in the face of special circumstances dictating that the bankrupt be relieved from a state court order mistakenly ruling a debt non-dischargeable." [28]

The key to understanding the use made of *Local Loan* is to appreciate the significance of judicial attitude. Will the individual judge look at the substance of the bankrupt's situation and correct a misinterpretation or miscarriage of justice in the state court, or will he say, as most of them do, that the bankrupt has an adequate remedy—even if this remedy is as a practical matter not available? [29]

The contrast between the majority and the dissent in *Helms* v. *Holmes* [30] is a good example of the form versus substance approach which characterizes these cases. The bankrupt in question sought to enjoin the execution of a default judgment on a debt which was clearly discharged in bankruptcy. The bankrupt, thinking that he was only the nominal defendant in a suit naming him as co-defendant with his wife, and unaware of the necessity to plead the bankruptcy discharge affirmatively, failed to appear and defend. The circuit court held that the district court improperly exercised equitable jurisdiction. The court reasoned that the bankrupt had a legal remedy which he waived by not appearing to defend in the state proceeding. Even if the state judgment was patently unfair, equitable relief is unavailable, and no "unusual circumstances" exist, when a bankrupt waives his legal remedy. In addition, the court thought that the bankrupt still had a state remedy which he could pursue to obtain equitable relief from the judgment.

Judge Paul, in his dissent, argued that denying equitable relief effectively circumvented the policy of the Bankruptcy Act, by failing to appreciate the actual situation of the bankrupt:

". . . [T]his modern view of the right of a bankruptcy court to protect by injunction the effect of a discharge in bankruptcy has been inspired by the necessity of dealing with manifest injustices that have arisen rather than from any essential error in the theory of the earlier cases. The average bankrupt is a layman who has been advised that a discharge in bankruptcy releases him from his debts and who has faith in the dignity, force, and effect of a decree of a federal court. He has surrendered his property and has no means to defend himself against further litigation." [31]

In addition, Judge Paul argued that the federal court should take cognizance of a state proceeding where unscrupulous creditors take advantage of bankrupts by arguing such cases before state magistrates who are sometimes almost as ignorant on the subject of bankruptcy as laymen. The disproportionate expense necessary to achieve the fruits of the discharge decree must be considered, especially in this case where Judge Paul considered any possible state remedy to be effectively unavailable.

Recently two notable cases have taken the approach of Judge Paul in evaluating the advisability of exercising equitable jurisdiction: *State Finance Co.* v. *Morrow* [32] and *Matter of Forgay.*[33] These cases do not seem indicative, however, of any trend toward the equitable substantive approach in these cases. The "unusual circumstance" approved in the *Morrow* case was the inability of the magistrate to properly adjudicate a bankruptcy discharge. The "unusual circumstance" in the *Forgay* case is more difficult to pinpoint; the opinion, in fact,

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[28] T. A. Smedley, *Bankruptcy Courts as Forums for Determining the Dischargeability of Debts,* 39 Minn. L. Rev. 651, 665–6 (1955). See, also, cases cited therein.
[29] *Id.* at 622.
[30] 129 F. 2d 263 (4th Cir., 1942).
[31] *Id.* at 269.
[32] 216 F. 2d 676 (10th Cir., 1954).
[33] 140 F. Supp. 473 (Utah, 1956); aff'd. 240 F. 2d 18 (10th Cir., 1957); *cert. denied,* 354 U.S. 922 (1957).

highlights the heroic nature of the courts employing *Local Loan* and presents the problem of using that case as precedent. The *Forgay* court was influenced by what they thought was an obvious circumvention of the Bankruptcy Act by the plaintiff loan company who had notice of the federal bankruptcy proceedings but made no attempt to block the discharge in the federal bankruptcy hearing. This view was justified before passage of the 1960 amendment eliminating "false pretenses" as a ground for blocking the discharge decree.[34] Today a creditor raising "false pretenses" in the Bankruptcy Court would be specifically told to raise the issue in the appropriate state proceeding.

Further case analysis might be pursued, but the limited utility of *Local Loan* in most jurisdictions justifies a more abbreviated treatment. The Northern District of Illinois, which had 11,587 voluntary bankruptcy decrees last year alone, is a good example of the viability of this doctrine.[35] According to Bankruptcy Referee Bruno Nowogrodski, *Local Loan* is used in the Northern District "only in the grossest cases of injustice." To his knowledge only two or three times during the last eight or nine years did his federal court judge exercise post-discharge equitable jurisdiction on the basis of *Local Loan*.

EXISTING STATE REMEDIES (COMMON LAW)

". . . [T]he practice is too common for creditors with dischargeable debts to disregard the judgments of this Court discharging bankrupts and to file proceedings in the State Courts, hoping, and too often obtaining, judgments on various pretexts, thereby coercing bankrupts into paying out of future earnings debts which in law have been discharged, or imposing upon them expensive and burdensome litigation. . . .

"Furthermore, every such case that is successfully maintained in the State Court induces others to try the same method, thus impairing or destroying the efficacy of the judgments of discharge of this Court." [36]

Even today, the situation described above is quite often the case. "Schlock" merchants and shady loan companies will all but ignore the discharge in bankruptcy in attempting to collect money from the indigent, often unrepresented, debtor. In some instances the case is scarcely more promising for the debtor with an attorney. A couple of very effective loop-holes exist in the law and they provide unscrupulous creditors with a method of effectively evading the discharge in bankruptcy as it applies to the debts owed to them. This section of the paper will discuss these loop-holes and suggest methods of coping with them.

A) THE WILFUL AND MALICIOUS PROBLEM

"A discharge in bankruptcy shall release a bankrupt from all of his provable debts . . . except liabilities for . . . wilful and malicious injuries to the person or property of another . . . ." [37]

The wording of the above section is one important factor in limiting the effectiveness of bankruptcy. There are two elements to the problem. First, most credit sales to the poor involve secured financing. When bankruptcy occurs, the debtor normally surrenders possession of the property and lists the debt in the bankruptcy schedule. Difficulties arise when the debtor no longer has possession of the security. The creditor may then threaten a suit for illegal conversion of the security. The second aspect of the problem involves claims for wilful and malicious injury to persons or property. A poor person, for example, may have failed to defend himself in a suit for damages and, therefore, since many tort pleadings allege wilful and malicious injury, will be liable even after bankruptcy.

In the illegal conversion situation, the secured creditor, either before or after the discharge in bankruptcy, will attempt to repossess the security. If the debtor is unable to return it, the creditor will bring suit in the state court charging the bankrupt with wilful and malicious conversion of the security and will demand that the debtor either return the goods or pay damages. The amount of damages probably equals the amount due on the original loan or note. If the creditor wins this suit, he can then collect from the debtor the same amount of money that was owed on the debt discharged in bankruptcy. By thus converting the action from one on the debt to one in tort, the amount of the debt can be collected, bankruptcy notwithstanding.

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[34] Amendment to § 14 of the Act, 11 U.S.C. § 35(a)(2) (1964).
[35] "Tables of Bankruptcy Statistics," Administrative Office of the U.S. Courts, p. 251.
[36] *In re Caldwell*, 33 F. Supp. 531, 635 (1940).
[37] 11 U.S.C. § 35 (1964).

In some cases these suits are relatively easy to defend. For example, if a male customer buys a woman's watch, it is obvious that his intention is not to wear the watch himself. Should the creditor attempt to sue the buyer for conversion, the argument can then be made that the seller knew that the property was not purchased for the buyer's own personal use, and therefore he cannot charge the buyer with the wilful and malicious conversion of the watch.

Another technique is to ask for a jury trial in such conversion cases, as well as in all post-bankruptcy cases. For even if the client may technically still be liable on the debt, the cost and inconvenience to the creditor may be great enough that he will drop the case. This "harassment in reverse"—the threat of a lengthy and expensive jury trial—can be a very effective deterrent to unscrupulous creditors. And even if the case does go to trial, the debtor will have the benefit of having a sampling of the public—the jury—hearing his plight and coming to his aid.

If the creditor is going to get judgment for wilful and malicious injury to his person or property and therefore avoid the effect of a discharge in bankruptcy,[38] he must prove that the act done was *both* wilful *and* malicious.[39] The burden of proof is on the creditor; if he cannot assume it, the bankrupt's discharge will serve as an effective affirmative defense.[40]

The leading case in the conversion area is *Davis* v. *Aetna Acceptance Co.*,[41] where the court stressed that not all liabilities for conversion of another's property were nondischargeable:

"There is no doubt that an act of conversion, if wilful and malicious, is an injury to property within the scope of this exception . . . But a wilful and malicious injury does not follow as of course from every act of conversion, without reference to the circumstances. There may be a conversion which is innocent of technical, an unauthorized assumption of dominion without wilfulness or malice. [citing cases] There may be an honest, but mistaken belief, engendered by a course of dealing, that powers have been enlarged or incapacities removed. In these and like cases, what is done is a tort, but not a wilful and malicious one." [42]

A case illustrative of non-malicious conversion is *Rone Jewelry Co.* v. *Conley*.[43] In that case the defendant had purchased a ring and a set of silverware from the plaintiff. He lost the ring and sent the silverware to his mother in New Jersey. The creditor sued the debtor for the illegal conversion of his property. The Tennessee Supreme Court stated:

"We think that section 17 . . . clearly shows that the present case does not fall within this section of the statute for it plainly provides for wilful and malicious injuries to the person or property of another. In this case the defendant merely converted the property by sending it out of the State and this was not a wilful and malicious injury to the property of another as comes within the statute. . . . The giving of this property to defendant's mother was wilful, but in the absence of proof could not be defined as malicious." [44]

A New York Court outlined the scope of the "wilful and malicious" requirement in *Brown* v. *Garey*,[45] where it said:

"The court must examine the circumstances of each particular case and say whether it finds among them the elements which the law has come to accept as badges of wilfulness and legal malice. It has been said that 'a wilful disregard of what one knows to be his duty, an act which if against good morals, and wrongful in and of itself, and which necessarily causes injury and is done intentionally, may be said to be done wilfully and maliciously, so as to come within the exception.' (*Tinker v. Colwell*, 193 U.S. 473, 487) . . . A wrongful act done intentionally which necessarily causes harm and is without just cause or excuse constitutes a wilful and malicious injury. (*Kavanaugh v. McIntyre*, 210 N.Y. 175, 182; aff'd 242 U.S. 138) . . . Since a wrongful intent is not an essential element of conversion (*Boyce v. Brockway*, 31 N.Y. 490, 493; *Laverty v. Nethen*, 68 N.Y. 522, 527), an act of dominion done under mistake or misapprehension, and without conscious intent to violate right or authority, may yet be a conversion; but it is not a wilful and malicious conversion." [46]

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[38] *Greenfield* v. *Tuccillo*, 129 F. 2d 854 (2d Cir., 1942).
[39] *Seward* v. *Gatlin*, 193 Tenn. 299, 246 S. W. 2d 21 (1952).
[40] *Tudryck* v. *Mutch*, 320 Mich. 86, 30 N. W. 2d 412 (1948); *cert. denied*, 334 U.S. 819 (1948).
[41] 293 U.S. 328 (1934).
[42] *Id.* at 332.
[43] 204 Tenn. 275, 319 S. W. 2d 245 (1958).
[44] *Id.* at 277–8, 319 S. W. 2d at 246.
[45] 267 N.Y. 167, 196 N. E. 12 (1935); *cert. denied*, 296 U.S. 615 (1935).
[46] *Id.* at 169–70, 196 N. E. at 13.

The court in this case held that the liability arising out of a negligent conversion of the plaintiff's property was discharged in bankruptcy. These cases may indicate that even debtors, who owe debts that are secured by collateral no longer in their possession, may find relief in the Bankruptcy Act. Admittedly, there are cases holding to the contrary in this area,[47] but courts are showing an increased concern for the unwary debtor in such matters.

The other aspect of the "wilful and malicious" problem in the bankruptcy field involves judgments arising from negligence suits where one of the counts in the plaintiff's allegation charges "wilful and malicious" or "wilful and wanton" conduct. Often the indigent defendant in such cases cannot afford a lawyer, or fails to retain one because he knows, or thinks he knows, that he is liable. As a result, the wilful and wanton aspect of the complaint is never challenged and remains in the judgment as rendered. Therefore, even though the debtor may subsequently receive a discharge in bankruptcy, normally an adequate defense, the bankrupt is still liable because the "wilful and wanton" tort judgment is not discharged.

In some jurisdictions, if there has been a default judgment, the judge will look behind the decision of the case to the evidence in the record and make an independent determination of the defendant's "wilful and malicious" actions.[48] Some courts have held that negligence alone does not constitute sufficient "malice or wilfulness" to defeat discharge under the Bankruptcy Act.[49] Courts today are increasingly suspect of a defaut judgment decree establishing a debt as wilful and wanton.[50]

B) THE FALSE PRETENSES PROBLEM

"A discharge in bankruptcy shall release a bankrupt from all of his provable debts . . . except such as . . . are liabilities for obtaining money or property by false pretenses or false representations, of for obtaining money or property on credit or obtaining an extension or renewal of credit in reliance upon a material false statement in writing respecting his financial condition made or published in any manner whatsoever with intent to deceive . . ."[51]

In a post-bankruptcy action to recover a debt which would have been discharged in bankruptcy but for misrepresentations by the debtor, loan companies often sue the debtor for fraud rather than for the debt on the contract. Most loan companies usually will only sue a debtor discharged in bankruptcy if they suspect clear-cut and abusive fraud on his part. However, unscrupulous loan companies use this same technique to collect debts which should otherwise have been discharged.

The plaintiff-creditor must prove actionable fraud in order to collect. The evidence must establish:

"1) that the defendant made a material misrepresentation;
"2) that it was false
"3) that when he made it he knew it was false or made it recklessly without any knowledge of the trust and as a positive assertion;
"4) that he made it with the intention that it should be acted upon by the plaintiff;

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[47] *Stephens v. Southern Discount Co.*, 105 Ga. App. 667, 125 S. E. 2d 235 (1962); *Excel Finance Camp, Inc. v. Tannerhill*, 140 So. 2d 202 (La. App., 1962); *Fruchter v. Martin*, 350 Mich. 12, 15 N.W. 2d 125 (1957); *Verheyleweghen v. Klein*, 208 Misc. 783, 145 N.Y. S. 2d 178 (1955).

[48] *Wieczorek v. Merskin*, 308 Mich. 145, 13 N. W. 2d 239 (1944); *Seward v. Gatin, supra; Panagopulos v. Manning, 93 Ut.* 198, 69 P. 2d 614 (1937), rehearing denied, 93 Ut. 215, 72 P. 2d 456 (1937); *Globe Indemnity Co. v. Granskov*, 246 Wis. 87, 16 N. W. 2d 437 (1944).

[49] *In re Roberts*, 290 F. 257 (E. D. Mich., 1923; *Wyka v. Benedicts*, 266 App. Div. 1025, 44 N.Y.S. 2d 907 (1943), reversing 41 N.Y.S. 2d 127 (1943).

[50] This has not been the case in Illinois, however. Until very recently Illinois courts have held that where the decalaration consisted of several counts, one or more of which stated a cause of action based on malice, the other counts based on negligence only, the presumption was that a general verdict not stating the specific reason was founded on malice. E.g. *Greene v. Noonan*, 372 Ill. 286, 23 N. E. 2d 720 (1939).

A recent appellate case indicates a possible change in this rule. The First Division of the Illinois Appellate Court, in an opinion by Schwartz, J., said that "[t]he charge of malice, stated in . . . general terms and included with charges of simple negligence, is not sufficient to sustain a judgment as one based on malicious, wilful, and wanton misconduct." *Serpe v. Rivera*, 42 Ill. App. 2d, 84, 191 N. E. 2d 416 (1963). The case came up on an appeal from a default judgment of the Municipal Court of the City of Chicago. The wilful and malicious court was the last of eight; the other seven counts were charges of ordinary negligence. Facts in the complaint did not support the charge of wilful and malicious conduct.

[51] 11 U.S.C. § 35 (1964).

"5) that plaintiff acted in reliance upon it; and
"6) that he thereby suffered injury:
"All of these facts must be proven with a reasonable degreee of certainty and all of them must be found to exist." [52]

Furthermore, the burden of proof is on the creditor, as in the "wilful and malicious" cases. In both situations, the creditor is claiming that his debt is excepted from the operation of the discharge in bankruptcy because of the alleged fraud.[53] The usual procedure for the plaintiff in these cases is to introduce in evidence the bankrupt's financial statement filed when the loan application was made and compare it with the schedule of debts listed in the bankruptcy petition. This usually creates a prima facie case of fraud, the finance company maintaining that these financial statements are "credit granting" instruments relied upon by loan company managers in approving loans. The finance company manager then testifies that he would not have approved the loan if the debtor submitted an accurate financial statement. The burden of proof shifts to the bankrupt to show non-reliance by the loan company.

The greatest weakness of the creditors' cases is that the loan companies know that these statements are not true and often do not rely on them. It may even be that loan companies actually encourage a debtor *not* to list all his debts. This fact, however, is difficult to prove. The debtor must have an unusually well-documented case to prove non-reliance.[54]

If the defendant can show that he and the plaintiff company had done business over a long period of time, and therefore that the company was really loaning him money because of the established relationship, not in reliance on the statement, he might be able to win. In *Excel Finance Treme, Inc.* v. *Noel*,[55] the facts showed that fifteen previous loans had been transacted between the same parties and that the defendant had been told to just list just one of his debts. The court said that the procedure of having the debtor list a debt on his application was a mere formality —the financial statement played no actual part in the process of granting the loan.

The task of post-discharge attorney is to gather as much evidence as possible to indicate methods used other than the financial statement in the processing of loans. Some loan companies, for example, will send their investigators into the debtor's neighborhood to check his reputation and appraise the security. In such cases a court may find that a debt has been discharged in spite of the incorrect statements on the application.[56]

The debtor's literacy may also be a factor. In *Accounts Supervision Co.* v. *Atley*,[57] the debtor was illiterate, but the loan company manager nevertheless had him make some scrawlings on the application. The manager, though admitting the illegibility of the marks, claimed that they were supposed to say, "I owe Accounts Supervision Co. only." The debtor thought he had written, "Don't owe no loan company but Asco." The judge felt that this statement would not have been executed with any intent to defraud.[58]

A closing word of warning is in order. It should not be assumed that the authors feel that a debtor who willingly and fraudulently makes gross misrepresentations in order to obtain credit should receive the benefit of a bankruptcy discharge. This was not the intention of the Bankruptcy Act. The concern here is to protect the innocent debtor from abuses arising out of his ignorance.

EXISTING STATE REMEDIES (STATUTORY)

A few states, notably New York, California, Minnesota, and North Dakota, have adopted legislation of the following nature:

"At any time after one year has elapsed since a bankrupt was discharged from his debts, pursuant to the acts of congress relating to bankruptcy, the bankrupt, his receiver, trustee or any other interested person or corporation, may apply upon proof of the bankrupt's discharge, to the court in which a judgment was rendered against him . . . for an order, directing the judgment to be cancelled and discharged of record . . ." [59]

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[52] See *Tyler* v. *Hartford Accident and Indemnity Co.*, 195 Okla. 523, 159 P. 2d 722 (1945).
[53] *DeLatour* v. *Lala*, 15 La. App. 276, 131 So. 211 (1930).
[54] *Personal Industrial Loan Corp.* v. *Forgay*, 240 F. 2d 18 (19th Cir., 1957), *cert. denied*, 354 U.S. 922 (1957).
[55] 138 So. 2d 654 (La., 1962).
[56] *Accounts Supervision Co.* v. *Atley*, 89 So. 2d 508 (La. App., 1956).
[57] *Ibid.*
[58] *Id.* at 510.
[59] N.Y. Debtor and Creditor Law, § 150.

The California, Minnesota, and North Dakota statutes are similar.[60] The quoted legislation applies *only* to actual judgments of record issued before the debtor was granted his discharge by the federal Bankruptcy Courts. These statutes do not extend to other claims which were not as yet reduced to final judgment as of the date of the discharge. This is because the purpose of these statutes is to expunge from the records uncollectable outstanding judgments—not to relieve debtors from unwarranted creditor harassment.

One state—Wisconsin—permits the debtor himself to go into the state courts to demand an immediate determination regarding the dischargeability of debts scheduled in the bankruptcy proceeding.[61] Its statute removes the one year waiting period and allows the debtor to proceed on his own motion. The utility of the statute is questionable, as the poor debtor is not likely to spend the money to maintain this action.

Putting aside for a moment the consideration of expense, the Wisconsin statute does have potential value for the poor. It would be an obvious aid to the impoverished debtor to know that the discharge is final, and that there is no way for the creditor to revive a discharged debt by going into the state courts on whatever pretext. For an immediate post-discharge determination of dischargeability to be of maximum value to the poor man, this determination should extend to all claims and not be limited to judgments of record at the time of the discharge. The California Code of Civil Procedure provides as follows:

"The court may, upon such terms as may be just, relieve a part or his legal representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. Application for such relief must be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and must be made within a reasonable time, in no case exceeding six months, after such judgment, order or proceeding was taken." [62]

Statutes allowing for the reopening of default judgments are found in many states. Six months, however, is an unusually generous time limit. Thirty days is far more common.

As previously noted many debtors discharged in bankruptcy are unaware of the effect of their discharge. When a summons is received on a debt, which the bankrupt thinks has been cancelled, he will ignore it. The debtor cannot avoid execution of the judgment. That is probably the first time the bankrupt will realize just what the summons was actually about. When he finally seeks legal advice, it is frequently too late to do anything to help him. If the period in which default judgments could be opened was extended, perhaps the plight of the poor debtor would then be at least partially relieved.[63]

OTHER RECOMMENDATIONS

There are a number of steps which could be taken legislatively on both the state and federal levels in order to implement the Bankruptcy Act more effectively. There are two modes of attack on this problem, both of which result from the split state-federal jurisdiction on the discharge decree. All bankruptcy questions could be dealt with in the federal courts initially *and* in post-discharge proceedings, with *the emphasis on* strengthening the effectiveness of the federal proceeding. Alternatively, state procedures utilizing the bankruptcy decree could be simplified and strengthened.

A simple proposal to improve the bankrupt's understanding of the decree, a job in which many attorneys are often remiss, is to have a notice handed to the bankrupt, with an explanation by the Referee of the nature of the decree and a warning to consult a lawyer should he receive summons on *any* debt, even those discharged in bankruptcy.[64] The hope is that the bankrupt who receives a summons will then consult these directions and turn the summons over to his lawyer. As previously indicated, the bankrupt will often win a *contested* suit in

[60] Cal. Code of Civil Procedure, § 675.b; Minn. Stat. Ann. § 548.18 (1947); N.D. Century Code, § 28–20–30 (1960).

[61] Wisc. Stat. Ann. § 270.91 (1958).

[62] Cal. Code of Civil Procedure, § 473.

[63] See William London, "Confessions of Judgment and the Poor," student workshop paper presented at the Conference on Consumer Credit and The Poor, University of Chicago Law School, Nov., 1965.

[64] A possible notice might read:

In the event you receive a summons or other notice concerning any debt related to this bankruptcy proceeding, Immediately See a Lawyer. If you fail to do this, you may find that you will be held unnecessarily liable for some of the debts listed in your bankruptcy discharge. Remember, See a Lawyer in all matters relating in any way to this discharge.

a state court—the problem lies in letting the bankrupt know that a contest is necessary. But in any event it is more likely that a legally trained person will communicate with the suing creditor before a default judgment is entered.

Another proposal to reduce the default judgments in post-discharge proceedings would be an amendment requiring a bankrupt to personally waive the affirmative defense of his discharge decree in open court. If the creditor failed to have the bankrupt present in the state proceedings, the bankrupt would have grounds to collaterally attack or reopen the case when the creditor attempted execution on the judgment. This procedure would deter the unscrupulous creditor from prosecuting actions in the state courts gambling on the bankrupt's ignorance of the need to affirmatively plead the discharge.

Thirdly, it has been suggested that credits who are listed on the schedule of debts owed by the bankruptcy petitioner be required to give notice of their intention to later object to the dischargeability of the debt in the state court. In this way, the debtor's attorney could either arrange to represent him in the later suit, or at least explain to the debtor that he must appear and plead his bankruptcy discharge as a defense. A possible shortcoming to this recommendation might be that every creditor would file such a statement of intention to protect himself and leave the door open should he later decide to sue on the debt. To eliminate or reduce this problem, it might be possible to charge a filing fee as security. Such measures would serve to reduce the number of statements filed as a matter of form, but even if they did not, the fact that such a statement was filed should be sufficient to alert those concerned.

The problem of post-discharge actions could be alleviated by giving the Federal Bankruptcy Court jurisdiction over all actions which relate to debts involved in bankruptcy. The Bankruptcy Court would issue a partial discharge decree listing all provable debts which have been discharged in bankruptcy; this adjudication would be *res judicata* in any state court action on the debt. Any creditor who wished to challenge the dischargeability of his debt would object in the federal proceeding or be barred from any further actions on the debt. If any new evidence tending to establish nondischargeability came to light after the bankruptcy proceeding, the federal court would take jurisdiction at the bankrupt's option.

An alternative proposal accomplishing many of the same goals could be utilized in the states. A simple administrative procedure for laying the bankruptcy decree out in the state records could implement the effectiveness of the discharge. The bankrupt subsequent to discharge would be instructed to take the decree to a state agency established specifically for the purpose, pay a minimal filing fee, and have the discharged debts recorded in the state records under his name. The creditors would be notified and given a period to object to the discharge. After expiration of the period the dischargeability of these debts would be *res judicata* in the states also.

If a creditor wished to challenge the dischargeability of his debt, he would have to file suit during the prescribed period or be forever barred. Proper recording of a debt could be pleaded as a defense to execution of a default judgment on a suit filed after the prescribed period for filing. This procedure, however, would not eliminate the ignorance problem—the poor bankrupt might still fail to plead the debt recordation defense in the execution proceeding. It also seems unnecessary to burden the bankruptcy process any more than it is already. The added expense and administration makes this a less desirable alternative than those proposals which utilize the federal court to eliminate post-discharge problems.

Another recommendation is to provide more frequent bankruptcies for certain classes of consumers. It might be possible to permit bankruptcies every three years for persons who earn, say, less than $4,000 per year. Most creditors cancel accounts unpaid for three years anyway. Furthermore, such a change hopefully would force lenders into more responsible and cautious credit policies in this highrisk area. Knowing that they can only pursue their high-pressure collection techniques for three years at the most, the "schlockmeisters" may be less willing to sell products to just anyone who wanders in.

As indicated earlier, a debtor is not discharged on debts arising out of fraudulent misrepresentations made in receiving credit, provided the creditor relies in some way on such statements. Possibly the reliance aspect of this requirement should be made more stringent, so as to necessitate complete reliance by the creditor on the statement in order to prevent the debt from being discharged. As the laws stand now in some jurisdictions, partial reliance is sufficient, even

though the creditor may have weighed other factors in addition to the debtor's statement of his liabilities. The suggestions that "false pretenses" be eliminated as a ground for establishing debt non-dischargeability seems to go too far, because it would encourage fraud.

A corollary to tightening the reliance requirement might be to require all lenders and creditors in a specific vicinity to make use of the facilities of a lender's exchange or have a state lender's exchange set up.[65] A recording type statute would put creditors on constructive notice of their customers' financial obligations. In this way, creditors could not say that they relied on any statement made by the borrower omitting debts that had been recorded, thus allowing the discharge of these debts in bankruptcy. This system might be only partially effective, for it could not easily be made applicable to every single businessman who extended credit. The administrative burden involved in requiring all merchants to use the system might well make it impractical. This proposal would, however, go a long way toward alleviating the problem, because many post-discharge actions based on "false pretenses" involve small loan company loans which the debtor has outstanding; many of these loans are not presently listed with the existing Lenders' Exchange.

CONCLUSION

This paper has attempted to survey bankruptcy law and the poor in hopes of making bankruptcy a more effective remedy—both by expanding existing law and proposing new law. We have not examined the effect these proposals will have on credit. We make no judgment about the availability of credit. In addition, we have made no study to determine the magnitude of the problems considered. These considerations have been left for others to explore.

A few other caveats are also in order. Voluntary bankruptcy is anything but a panacea for correcting creditor abuses. Although the bankruptcy proceeding could have some utility in raising questions of unconscionability and elimination of debts, bankruptcy is a remedy of last resort. Indeed, creditor abuses should be corrected *before* they are perpetrated. Furthermore affirmative actions short of bankruptcy should also be recommended to the debtor. A prospective bankrupt should be told the possible hazards as well as the benefits of bankruptcy: 1) for various reasons, he will have to reaffirm some debts e.g., to prevent suit against his cosigner or to retain possession of the security; 2) credit in the future may cost him more and will probably be advanced by only the least scrupulous creditors; 3) he will be vulnerable to the creditors for six years, the period he must wait before he can again declare bankruptcy.

In Biblical times, all Jews were relieved of their debts every seven years. The Bankruptcy Act offers a prospect similar to such "Jubilee Years" for those debtors who today are victimized and need relief. With constant diligence on the part of those concerned with the problems of the poor, the Bankruptcy Act may prove an even more effective remedy in the future.

[Journal of the National Conference of Refereees in Bankruptcy, October 1966]

REFEREE CLIVE BARE EXCISES USURY FROM SMALL LOAN COMPANY CLAIM IN CHAPTER XIII PROCEEDING

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, NORTHERN DIVISION

In Proceedings under Chapter XIII, No. 23,372

IN THE MATTER OF WILLIAM SYLVESTER BRANCH, DEBTOR

(See p. 952 for full text.)

[65] In Chicago, the Lender's Exchange does exist to facilitate the flow of credit information among the various small loan companies and thus to provide an independent method of ascertaining a person's indebtedness. However, many loan companies do not belong to this group—especially those of the schlock variety—so that the possible value of the Exchange is presently greatly diminished.

[Journal of the National Conference of Referees in Bankruptcy, January 1966]

CONSUMER BANKRUPTCY: A CONTINUING PROBLEM

By Robert Dolphin, Jr., Assistant Professor of Finance, School of Business, the Florida State University, Tallahassee

Although a great deal has been written about consumer bankruptcy, neither the bankrupt nor his creditors have been satisfactorily identified. Little is known about the bankrupt's characteristics or the sources of his credit. Is a particular segment of society subject to bankruptcy, or is it a malady of the general population? Do all creditors share the responsibility, or, as frequently asserted, does the consumer loan company play an important role in the consumer's flight toward bankruptcy? This paper attempts to answer these questions and to supply a workable solution to the ever-increasing number of consumer bankruptcies.

The consumer bankrupt shall be defined as an individual who uses the Bankruptcy Act to discharge his debts, none of which are the result of past business endeavors. In fiscal 1965, filings of 135,386 consumer bankruptcies were recorded, a record representing a 5.8 per cent increase over the previous year and 214 per cent increase in the past decade.[1] Adequate data and the amount of debt involved on a national level are not available;[2] however, data developed in the writer's study, as well as in other studies, indicate that the typical bankrupt owes about $3,200 of non-real estate debt.[3] Based on this figure, consumer bankrupts held about $433 million of debt at time of bankruptcy in 1965. Perspective may be obtained by comparing the debt to the amount of consumer credit outstanding. Consumer bankruptcy debt, in 1965, represented approximately 0.5 per cent of consumer credit outstanding. Thus, although consumer bankruptcy is growing at a rapid rate, it still involves a relatively small amount of consumer credit.

The study providing data for this paper was done in Flint, Michigan, county seat of Genesee, and covers 482 consumer bankruptcy petitions, all petitions filed in 1963 in that county. The area is a highly industrialized automobile based economy. It should be typical of many industrial communities of the nation, and, thus, lend some degree of generality to the data.

CHARACTERISTICS OF THE CONSUMER BANKRUPT

The bankrupt's identity may be briefly summarized in the following manner. He typically is a white male thirty years old with a family of five. With a tenth-grade education, he works at a blue-collar job for an income of $4,656. Although the bankrupt in terms of his social and income characteristics is atypical of the general population, he is typical of a large part of contemporary society. A closer look at the underlying data reveals several interesting characteristics.

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[1] These figures indicate a slightly slower rate of growth of bankruptcies than usually reported, due to the exclusion of Chapter XIII cases. Although Chapter XIII cases are provided for in the Bankruptcy Act, they usually provide for debt repayment rather than discharge; therefore, they are not considered bankruptcies in this paper.

[2] The Administrative Office of the United States Courts reports the amount of debt recorded on the petitions filed in bankruptcy, but does not classify the data so that consumer bankruptcy debt can be distinguished from business bankruptcy debt.

[3] Note, in this paper, real estate is excluded due to the inaccuracy of available data and because it is the only type of debt in consumer bankruptcy on which little is lost by creditors. See the following studies for average debt estimates. Robert Dolphin, *An Analysis of Personal and Economic Factors Leading to Consumer Bankruptcy*, Bureau of Business on Economic Research, Michigan State University, 1965; George A. Brunner, Personal Bankruptcies: *Trends and Characteristics*, Bureau of Business Research, Ohio State University, 1965; John J. Brosky, *A Study of Personal Bankruptcy in the Seattle Metropolitan Area*, Retail Credit Association of Seattle, 1965.

Family Status

During 1963, in Genesee County, Michigan, 97 percent of all the petitioners in bankruptcy were male.[4] This does not mean that bankruptcy is strictly a man's problem. Ninety-four percent of these individuals were married. Thus, most bankruptcies represent the financial failure of a family unit rather than merely an individual. Interviews with petitioners indicated that, in the typical case, the financial trouble may well be the result of both the husband's and wife's lack of frugality. Most of the family's daily purchases are made by the wife while both the wife and husband participate in the purchase of big-ticket durable goods. The husband's bankruptcy reflects the family's financial failure.

There is a significant difference in the marital status of individuals going into bankruptcy and the marital status of members of the same community. Ninety-four per cent of the bankrupts are married as compared to 84 percent of the community. Interpretation of this difference should be tempered by the credit grantor's extreme caution in extending credit to single men, especially younger men (most bankrupts are less than 30 years old). This attitude may mean that young single men are subjected to higher credit standards and this leads to a lower rate of bankruptcy for them.

There are two feasible explanations of the greater incidence of bankruptcy among the married than among the unmarried segments of the community. First, as an individual begins married life, the need for additional funds arises, but the marriage does not change his occupational level or income level. Thus, a newly married couple must reduce their respective standards of living,[5] or use credit in anticipation of higher income. This may be the beginning of financial trouble which is culminated in bankruptcy.

Second, marital discord may be another factor leading to the higher bankruptcy rate among married persons. Three per cent of both groups, the bankrupts and the community, were divorced at time of bankruptcy. However, 12 per cent of the bankrupts were separated, as compared with one per cent of the community. Nevertheless, there is always a question as to whether the marital problems caused the financial difficulty or whether the financial difficulty caused the marital problem. A check of a limited sample indicates that many of the separations were of long standing. To the extent that this prevails, the significance of marital discord is reduced.

Not only do most bankruptcies involve a family, they involve a family that is large in comparison to the average family of the community. The average bankrupt family has one more person than the average family in the community, 4.9 versus 3.8 members respectively (Table 1). However, the difference is greater than indicated by the averages. Twenty-three per cent of the bankrupt families had seven or more members while only seven per cent of all families were that large. The nature of the difference in family size is more strikingly illustrated by considering the percentage of families with five or more members. Fifty percent of the bankrupts had families of five or more while only 29 per cent of all families were that large.

The individual representing the family in bankruptcy is a relatively young man. His median age is 30.2 years versus 40 years for the general population (Table 2). There is a high concentration of bankrupts in the 25–34 age category. Sixty per cent of the bankrupts are in this group as compared to 25 per cent of the general population. In the ages of 40 and over, there are fewer bankrupts than would be expected, considering the age distribution of the community.

Existence of more young bankrupts and fewer older bankrupts than would

[4] All data on the characteristics of the bankrupt are based on a subsample of, n=172, unless otherwise indicated. See appendix for estimates of statistical error.

[5] However, employment of the wife may delay the adjustment.

be indicated by the age distribution of the general population is undoubtedly the reflection of the lack of correlation of needs and income over the life cycle. In addition to the rising expenses of a young growing family, there is a need for a substantial amount of durable goods. This occurs at a time of low and unstable income; thus, this group is prone to use credit. With aging, income normally increases and becomes more stable while expenses stabilize; consequently, there is less need for credit.

Data available on use of consumer credit by age groups, although less than might be desired, support the preceding observations. During 1962, a higher proportion of spending units under 35 years of age used installment credit than any other age group. Sixty-one per cent used credit.[6] While 45 per cent of the individuals 45–54 years old used installment credit, only 32 per cent of those 55–64 used it. Note that the groups with high and low use of credit correspond to those with high and low bankruptcy rates.

Education, Occupation, and Income

The bankrupts' level of education was higher than might be expected. The median level of education for the bankrupt group was 10 years versus 10.4 years for the community (Table 3). However, examination of the data indicated that the bankrupts had a higher drop-out rate in the first three years of high school than did the community members in general. Few bankrupts were college educated.

Given the lack of college training and the failure to finish high school in many cases, it should not be surprising that 94 per cent of the bankrupts are blue-collar workers versus 69 per cent of the general male population. A further consideration, the extent to which each group uses credit, should not be overlooked. Blue-collar workers appear to be more frequent users of installment credit, 59 per cent for skilled and unskilled workers as compared to 42 per cent for clerical workers based on 1957 data.[7] Nevertheless, more bankrupts are blue-collar workers than would be indicated by the credit use data.

Considering that the bankrupts' education and occupation are somewhat at variance with the community, the difference in income is less than might be expected. The median incomes for the bankrupts and the community were $4,656 and $5,078 respectively (Table 4). Income data are based on 482 cases. It is clear that bankruptcy is not limited to the lower income groups. Sixty-three per cent of the bankrupts had income of $4,000 or more while 43 per cent had $5,000 or more. Although there is considerable variation in income among bankrupts, the income of most bankrupts is fairly stable within a given income bracket. Forty-eight per cent reported no change in income in the six months preceding bankruptcy and 28 per cent had an increase. Thus, only 24 per cent experienced a decline in income. Data on the amount of spouse income was not available, but only four per cent of the spouses reported a decline and 87 per cent remained the same. Apparently most families did not experience a decline in income just prior to bankruptcy.

Rate and Mobility

Due to the problems that often face minority groups, the racial composition of the bankrupts is of importance. Apparently there is a tendency for some to think that the Negro rate will be more than proportionally represented. Data in this study do not support such a conclusion. There was a proportional representation between the Caucasians and Negroes with eighteen per cent of the community being Negro and the same relationship prevailing among the bankrupts.

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[6] George Katona, Charles A. Lininger and Richard F. Kosabud, *1962 Survey of Consumer Finances* (Survey Research Center, University of Michigan), p. 69.

[7] *Consumer Installment Credit Growth and Import,* Part I, Vol. I (Board of Governors of the Federal Reserve System, 1957), p. 113.

Another opinion expressed is that many bankrupts are individuals who have recently migrated to the community. Again, such a conclusion is not borne out by the facts. Sixty-five per cent of the petitioners had lived in Flint (the location of this study) during the six years preceding filing for bankruptcy. Seventy-nine per cent of the bankrupts had lived at least within the county and 93 per cent of the bankrupts had lived within the state. Although he remains a resident of the community for several years, the bankrupt tends to move frequently. Forty-four per cent had moved three or more times while 25 per cent moved four or more times in the measured time period.

SOURCES OF CREDIT

The potential bankrupt has a wide variety of creditors. They range from doctors to commercial banks. Determination of which creditor is the most important in the individual's financial plight is fraught with difficulties, not the least of which is choosing the criteria for measuring importance. Two criteria employed here are the amount of debt owed each type of creditor and the number of creditors of each type owed.

Types of Creditors

In terms of the amount of debt owed to each type of creditor, financial institutions as a group (commercial banks, sales finance companies, small loan companies, and credit unions) were quite important. They held 47 per cent of the bankrupts' debt at the time of his filing for bankruptcy (Table 5). Commercial banks and sales finance companies held the largest amount of debt, 17 and 16 per cent respectively. Most of the debt held by these two institutions was for the purchase of durable goods as opposed to personal loans.[8] Medical service creditors (doctors, dentists, druggists, etc.) were the next most important group for they held 15 per cent of the debt. They were followed by retailers with 12 per cent of the debt. Small loan licensees were the only financial institutions, other than banks and sales finance companies, of major importance. They held 11 per cent of the debt. Credit unions were next, but held only three per cent of the debt.

Although financial institutions are of prime importance in terms of the amount of debt, they are of much less significance in terms of the number of creditors owed. In this case retailers rank first followed closely by the medical group. Thirty-one per cent of the creditors were retailers and 28 per cent were medical service suppliers. These two groups held many small debts compared to a smaller number of larger debts held by financial institutions. The average debt per retail and medical creditor was $47 and $44 respectively for small loan licenses, sales finance companies and commercial banks. Thus, to the extent that collateral pressure is the function of the number of creditors, retail and medical service creditors were possibly more important than financial institutions.

Amount of Debt and Number of Creditors Owed

All creditors, as a group, had claims against the average bankrupt of $3,184 (median). However, 19 per cent of the bankrupts owed less than $2,000 and 47 per cent owed less than $3,000 (Table 6). The mean number of debts was 16, or two greater than the median (Table 7). The higher mean was due to a few individuals with extremely large numbers of creditors. Over one-fourth of the bankrupts had 20 or more creditors and one petitioner had 75 creditors.

Financial Behavioral Patterns

Observation of the bankrupts' financial behavior in the 12 months preceding bankruptcy is interesting. It seems reasonable to expect that an individual in financial trouble will recognize that he has overextended himself. If this is so, it then should be reasonable to expect that the individual would not assume

[8] In tabulating the data all personal loans were placed in the category "small loan licensees" and all sales finance debt was placed in the "sales finance company" category.

additional debt. However, as shown in Table 8, the potential bankrupt tends to assume greater and greater amounts of debt as he approaches his filing day.

An interesting question which should be asked is, could these people have paid their debts if they had curbed their spending? Disregarding psychic factors, the burden of debt is a function of one's ability to repay. Thus, debt repayment must be related to income level, size of family, etc. Analysis of a selected group of bankrupts in this study indicated that up to 49 per cent of them could have paid off 100 per cent of their debts within three years.[9]

SUMMARY AND SUGGESTIONS

Although, in general, no particular supplier of consumer credit seems overly represented in the consumer bankrupts' financial difficulties, the characteristics of the consumer bankrupt indicate that a definite social-economic class is generating most of the bankruptcies. It is typified by the young married family whose income is earned by the husband as a manual worker, while the wife is occupied with a more than average number of children. Their income is similar to that of the average for the community. Also, the burden of the debt is not unbearable.

The social characteristics of the bankrupt, his behavioral patterns and the relationship of his income to his debt provide the basis for the following suggestions. There is need for legislation which will restrict the availability of bankruptcy to certain individuals.[10] In addition, there is a need for programs dealing with consumer counseling on credit matters. Restricting the availability of bankruptcy will reduce the use of the Act to avoid debt repayment but at the same time this will not deny individuals court protection through Chapter XIII of the Act. Credit counseling, such as the nonprofit community counseling services established by private business, should help prevent the type of financial distress which leads to bankruptcy.

TABLE 1.—SIZE OF FAMILY BEING SUPPORTED BY INDIVIDUALS FILING FOR BANKRUPTCY CONTRASTED WITH THE TOTAL POPULATION

[Percentage distribution of families]

Size of family[1]	Bankrupt population	Total population[2]
2	8	30
3	17	20
4	24	20
5	19	14
6	8	8
7 and over	23	7
All families	100	100
Mean	4.9	3.8

[1] Size of family is defined as the number of people being supported including the bankrupt.
[2] Genesee County, Mich.

Note: Percentages may not add to totals due to rounding.

Source: U.S. Department of Commerce, Bureau of the Census, U.S. Census of Population: 1960. "General Population Characteristics, Michigan" (Washington: U.S. Government Printing Office), Final report PC (1)—24B; the data pertaining to the bankrupts are based on questionnaires administered by the referee at the first meeting of creditors in Flint, Mich., 1963. Sample size: 172.

[9] Chapter XIII (Wage Earner's Plan) of the Bankruptcy Act was set up as the vehicle for paying off the debt. This plan, administered by the Court, insulates the debtor from creditor collection pressure for three years and funds paid in by the debtor are distributed to his creditors. See my "The Economic Feasibility of Chapter XIII," *Business Lawyer*, XX (January, 1965), pp. 477–81.

[10] A proposal to amend the Bankruptcy Act was introduced on October 2, 1964 in the House of Representatives as H.R. 12784. This amendment would give the courts the power to deny an individual relief in straight bankruptcy where Chapter XIII could be used by the debtor, without undue burden, to repay his indebtedness.

TABLE 2.—AGE OF INDIVIDUALS FILING FOR BANKRUPTCY CONTRASTED WITH THE MALE POPULATION

[Percentage distribution of individuals]

Age	Bankrupt population	Male population
Under 20	0	(1)
20 to 24	11	10
25 to 29	37	12
30 to 34	23	13
35 to 39	12	13
40 to 44	6	10
45 to 49	5	9
50 and over	5	32
All individuals	100	100
Median age	30.2	2 40.0

1 Since bankruptcy is limited to individuals 21 and over (except in special cases), the percent of bankrupts in each age group is compared to the percent of the population 20 and over in each age group. Of the total population, 42 percent are under 20.

2 This figure is the median age for the male population 20 and over. The median age for the total male population is 32.6 years.

Note: Percentages may not add to totals due to rounding.

Source: See table 1. Sample size: 172.

TABLE 3.—EDUCATION OF INDIVIDUALS FILING FOR BANKRUPTCY CONTRASTED WITH THE MALE POPULATION 1

Number of years	Bankrupt population	Male population
Elementary:		
None	0	(2)
1 and 2	(2)	(2)
3 and 4	1	3
5 and 6	9	6
7	5	7
8	16	20
High school:		
1	14	8
2	18	9
3	13	7
4	20	24
College:		
1	1	3
2	(2)	3
3	1	1
4	(2)	3
Over 4	0	3
All individuals	100	100
Median	10	10.4

1 Male population of individuals 25 years old and over was used because the next lower age group, 14 to 24, includes people in school and thus not comparable to the bankruptcy group.

2 Less than 1 percent.

Source: See table 1; sample size, 172.

Note: Percentages may not add to totals due to rounding

TABLE 4.—INCOME LEVEL OF INDIVIDUALS FILING FOR BANKRUPTCY CONTRASTED WITH THE MALE POPULATION

[Percentage distribution of individuals]

Income level	Bankrupt population	Male population
None	1	3
Under $2,000	10	12
$2,000 to $2,999	10	7
$3,000 to $3,999	16	8
$4,000 to $4,999	20	17
$5,000 to $5,999	22	20
$6,000 to $6,999	15	12
$7,000 to $9,999	5	17
$10,000 and over	1	5
All individuals	100	100
Median income	$4,656	$5,078

Source: Petitions filed in bankruptcy, Genesee County, Mich., 1963; Bureau of the Census, see table 1, sample size, 482.

Note: Percentages may not add to totals due to rounding.

TABLE 5.—RELATIVE IMPORTANCE OF VARIOUS TYPES OF CREDITORS BY AMOUNT AND NUMBER FOR INDIVIDUALS FILING FOR BANKRUPTCY

[Percentage distribution]

Creditor	Amount of debt (percent)	Creditor	Number of creditors (percent)
Banks	17	Retail	31
Sales Finance Co.[1]	16	Medical	28
Medical	15	Service (other than medical)	12
Retail	12	Small loan licensees	7
Small loan licensees	11	Banks	6
Individual personal loans	7	Sales Finance Co.[1]	5
Service (other than medical)	6	Individual personal loans	2
Credit unions	3	Credit unions	1
Other	13	Other	8
All debt	100	All creditors	100

[1] The category "Sales Finance Co." includes only the installment sales contracts of those companies that extend both installment sales credit and loans under the small loan laws.

Source: Petitions filed in bankruptcy and data supplied at first meeting of creditors by petitioners from Genesee County, Mich., 1963. Sample size: 482.

TABLE 6.—*Amount of Debt Owed by Individuals Filing for Bankruptcy*

[Percentage Distributions of Bankrupts]

Amount	*Bankrupts*	*Amount*	*Bankrupts*
Under $1,000	1	$7,000-$8,999	4
$1,000-$1,999	18	$9,000- and over	4
$2,000-$2,999	28		
$3,000-$4,999	36	All Bankrupts	100
$5,000-$6,999	9	Median	$3,184

Source: Petitions filed in bankruptcy in Genesee County, Michigan, 1963.
Sample size: 482.
NOTE.—Percentages do not add to totals due to rounding.

TABLE 7.—*Number of Creditors Owed by Individuals Filing for Bankruptcy*

[Percentage Distributions of Bankrupts]

Number	*Bankrupts*	*Number*	*Bankrupts*
Under 10	20	40 and over	4
10-14	32		
15-19	21	All bankrupts	100
20-29	16	Median	14
30-39	6		

Source: See Table 6.
Sample size: 482.
NOTE.—Percentages do not add to total due to rounding.

TABLE 8.—*Amount of Debt Obtained by Individuals in Each of Twelve Months Preceding Filing for Bankruptcy*

Month	*Amount Obtained*	*Month*	*Amount Obtained*
1	$53, 000	7	$47, 000
2	50, 000	8	58, 000
3	75, 000	9	41, 000
4	84, 000	10	26, 000
5	47, 000	11	39, 000
6	42, 000	12	45, 000

Source: See Table 6.

APPENDIX

Significance of a Difference Between Sample Proportion and Population Parameter

Data from this study are to be related to the general population data; therefore, the population figures are accepted as parameters. Parameters of the population are those provided by the census bureau. There are two possible errors introduced in using census data as parameters. One is the possible difference between the census data and the true parameters; however, this is minimized by the large size of the sample from which the census data are derived. The other error is due to the age of the census data. Data on the bankrupt population of 1963 are being compared with data on the general population of 1960. This error is probably insignificant, since the characteristics of the population are unlikely to change markedly in three years.

The probability that an observed difference between a statistic computed on a sample and a corresponding population parameter is due to sampling error which can be tested by accepting the parameter as error-free and noting the significance of the difference in terms of the sigma of the sample. The level of significance computed for various proportions is shown in Table A-1 and may be used by the reader in approximating the level of significance.

The use of this table may be illustrated by considering the proportion of bankrupts and the proportion of the general population 30 to 34 years old (Table 2). Twenty-three per cent of the bankrupts are 30 to 34 while thirteen per cent of the population is 30 to 34. To determine at what level of confidence the difference is statistically significant, find the difference, 23%-13% of ten under "Sample Difference" on Table A-1 and read the entry in this row under the column of the nearest "Reported Percentage." In this case the nearest column is 25-75, indicating a "Z score" of 3.03. The normal curve table indicates that the difference is significant at the .0024 level of confidence. Commonly used levels of confidence, .05, .02 and .01 have "Z scores" of 1.96, 2.33 and 2.58 respectively.

Internal Estimate for Sample Proportions

The intervals within which the true proportions will lie for the sample, n=172, used in this paper, are shown in Table A-2. These are reflected for two levels of confidence, one per cent and five per cent. To illustrate the use of this table, refer to Table 2. Note that 37 per cent of the bankrupts are 25 to 29 years old. Under "Reported Percentage," in Table A-2, the nearest percentage is 35; reading under

the .05 level of confidence, a range of plus or minus 7.13 per cent is indicated. Thus, the interval that contains the "true proportion" at the .05 level of confidence is 29.87–44.13.

TABLE A-1.—NUMBER OF STANDARD DEVIATIONS BETWEEN SAMPLE PROPORTION AND POPULATION PROPORTION

Sample difference	Reported percentage								
	5–95	10–90	15–85	20–80	25–75	30–70	35–65	40–60	50–50
0.01	0.602	0.437	0.366	0.328	0.303	0.287	0.275	0.267	0.262
0.02	1.205	.873	.733	.656	.606	.573	.549	.535	.525
0.03	1.807	1.310	1.099	.984	.909	.850	.824	.802	.787
0.04	2,410	1,724	1,465	1,312	1,212	1,146	1,099	1,070	1,050
0.05	3,012	2,183	1,832	1,639	1,515	1,433	1,374	1,337	1,312
0.06	-------	2,620	2,198	1,967	1,818	1,719	1,648	1,604	1,575
0.07	-------	3,057	2,564	2,295	2,121	2,006	1,923	1,872	1,837
0.08	-------	-------	2,930	2,623	2,424	2,292	2,198	2,139	2,100
0.09	-------	-------	3,297	2,951	2,727	2,579	2,473	2,406	2,362
0.10	-------	-------	-------	3,278	3,030	2,865	2,747	2,673	2,624
0.11	-------	-------	-------	-------	-------	3,152	3,022	2,941	2,887
0.12	-------	-------	-------	-------	-------	-------	-------	3.209	3.150

TABLE A-2.—INTERVAL ESTIMATES FOR n=172

Reported percentage	Level of confidence, percentage intervals	
	1 percent	5 percent
5–95	4.28	3.25
10–90	5.91	4.49
15–85	7.04	5.35
20–80	7.87	5.98
25–75	8.51	6.47
30–70	9.00	6.84
35–65	9.39	7.13
40–60	9.65	7.33
45–55	9.78	7.43
50–50	9.83	7.47

(Mr. Richard L. D. Morse, head, Department of Family Economics, Kansas State University, Manhattan, Kans., submitted the following letter and related material for inclusion in the record:)

KANSAS STATE UNIVERSITY,
Manhattan, Kans., August 17, 1967.

Mrs. LEONOR K. SULLIVAN,
Chairman, Consumer Affairs Subcommittee, Committee on Banking and Currency, House of Representatives, Washington, D.C.

DEAR MRS. SULLIVAN: I appreciate this opportunity to comment on the page labeled, "Appendix A, an Actual Consumer Account from a Department Store Demonstrating Calculation of Annual Service Charge Rate."

1. I do not know what this exhibit is intended to show. It is an exercise in arithmetic but bears no direct relation either to the bill or to actual department store practices.

2. If anything, it demonstrates the need for H.R. 11601. The bill would require in Section 203(d)(3)(E) the annual percentage rate, (F) the balance on which the finance charge was computed and a statement of how the balance was determined and (H) the "free ride" possibility. If such information were disclosed in the exhibit, I would understand how they computed the monthly charges. This is something I cannot do even by guess work with the information they have disclosed. So I say the exhibit itself provides excellent proof of the need for H.R. 11601 on this ground alone, unless obscuration is their goal.

3. No store that I know of keeps daily balances and figures finance charges daily or on an average daily balance. Perhaps their intent is to indicate that this

bill reflects an *average store* practice of the store and an *average consumer* of that store. Hence, this proves that disclosure of 18% would not properly reflect the store's yield from this account.

I have no patience with such "average" reasoning; this bill is intended for the individual. Some customers use revolving credit and pay 0% while others pay 18%. If these customers were equally represented the average of 9% might prevail as the store's yield on its accounts receivable. Yet, 9% represents the practice of neither class of customers. It is useless information for the consumer.

If the bill were rewritten to apply to average experiences, individual consumers would have to think along such lines as: "Am I an average customer of Macy's?" "Am I the typical consumer of Federated Stores?" "Am I an average Sears mail order purchaser? . . And if I am not average, how shall I interpret their quotations based on experiences of their average customers?" This is ridiculous.

4. If the store should choose to use a daily billing cycle (with monthly statements), they could comply with Section 203(d)(3), under the suggested amendment (Number 13) in my Memorandum of August 5, by disclosing the daily rate of .0315% and its equivalent annual percentage rate of 11.49%. The column now headed "Monthly Service Charge," would read "Daily Service Charge."

That is, if the dollar days of $6,791.97 is multiplied by .0315%, the service charge will be $2.14. Likewise, the same result would be obtained if we applied the daily rate of .0315% to $41.26 eighteen times, to $26.26 for 10 days, etc. Enclosed is an amended form showing the daily rate.

The legislative draftsman may question whether the daily billing cycle with monthly mailing of statements to consumers would be in direct compliance with the bill as written. This is a relatively minor detail. The major point is that if the retailers really want a mechanism whereby the 11.49% can be disclosed, I seriously suggest the mechanism of employing a daily periodic rate to obtain their objective. But I suspect this is not their objective.

5. Retailers were very firm and outspoken in their objection to S. 1740 and S. 750, which was very different from S. 5 and H.R. 11601. It required "disclosure of the simple *annual percentage rate* or rates *providing a yield equal to the financial charge imposed.*" Their exhibit shows clearly how they could have complied with S. 750 in that *11.49% provides a yield of $2.14 equal to the finance charge imposed.* It is difficult for me to understand why they propose for consideration now a mode of disclosure which they once claimed to be impossible.

I agree with the retailers that this provision of S. 1740 (S. 750) of disclosing an effective yield or rate was impracticable. So I am in no position now to support their plea for revision of H.R. 11601 to require disclosure of the effective rate. Nor do I have patience with their argument that H.R. 11601 would require the disclosure of untruthful information. The more they demonstrate the inequity of 18% disclosure when the effective rate is 11.49% the more convinced I am that they are opposed to any disclosure.

Attached herewith is my March 8, 1967 letter to Mr. McLean evaluating Mr. Vancil's testimony on S. 750. You will note that I not only concur with Mr. Vancil, but predict that if he were to testify on S. 5, he would favor it. You will note Mr. Vancil's support of S. 5 appears on page 487 of the S. 5 Hearings. It's one qualification to full endorsement of S. 5 was met by adding the words now in subsection (H) of H.R. 11601.

6. In summary, this document proves the need for H.R. 11601 to disclose how the service charges shown were figured. If their intention is to relieve stores from quoting 18% when in fact the yield rate is closer to 11.5%, they can comply under the bill by disclosing the daily rate of .0315% and its annual equivalent of 11.49%. Finally, if they object to disclosing the 18% nominal rate and wish to have the bill reworded to disclose the 11.49% yield, then they responsibly answer all their earlier objections to the disclosure requirements under S. 1740 and S. 750. The present bill meets their previous objections, and this is acknowledged by their prime witness against S. 750, Mr. Vancil. I am confused, therefore, as to what useful point is intended in their exhibit. It indicates to me how desperate they are for an issue to block the annualized periodic rate disclosure.

Sincerely yours,

RICHARD L. D. MORSE,
Professor and Head.

P.S. I am also enclosing selected pages (16–18) from my statement prepared for the S. 5 Hearings to clarify two points: (1) The first two Douglas bills made no provision for revolving credit. (2) The only hearings on revolving

credit, prior to S. 5, were on S. 750 and it contained the yield concept. In my opinion, not until S. 5 was legislation proposed that was acceptable.

Enclosures: Appendix A, amended by R. L. D. Morse; Memorandum to Mr. McLean, March 8, 1967; Selected pages from Morse statement on S. 5.

APPENDIX A

AN ACTUAL CUSTOMER ACCOUNT FROM A DEPARTMENT STORE DEMONSTRATING CALCULATION OF ANNUAL SERVICE CHARGE RATE

Date	Purchase (payment)	Monthly service charge	Balance	Number of days	Daily service charge[1]	Dollar days
Feb 1	($15.00)		$41.26	18	$0.234	$742.68
Feb 18			26.26	10	.083	262.60
Feb 28		$0.48	26.74	31	.261	828.94
Mar 31		.40	27.14	21	.180	569.94
Apr 21	(15.00)		12.14	9	.034	109.26
Apr 30		.18	12.32	3	.012	36.96
May 3	13.00		25.32	10	.080	253.20
May 13	(12.32)		13.00	26	.106	338.00
June 8	11.00		24.00	22	.166	528.00
June 30	3.00	.20	27.20	31	.266	843.20
July 31		.36	27.56	20	.174	551.20
Aug 20	(27.56)		3.08	3	.003	9.24
Sept 6	3.08		6.16	7	.014	43.12
Sept 9	3.08		10.28	35	.113	359.80
Sept 16	4.12		11.83	10	.037	118.30
Oct 21	1.55		11.98	22	.083	263.56
Oct 31		.15				
Nov 22	(11.98)		10.82	6	.020	64.92
Dec 21	10.82		24.83	35	.274	869.05
Dec 27	14.01		25.20			
Jan 31		.37				
Total		2.14		319	2.14	6,791.97

[1] Daily rate equals 0.0315 percent.

Note: Average daily balance equals $21.29, $6,791.97 divided by 319; average daily service charge equals $0.0067, $2.14 divided by 319; annual service charge rate equals 11.49 percent, $0.0067 times 365 divided by $21.29.

KANSAS STATE UNIVERSITY, MANHATTAN, KANS., MARCH 8, 1967

MEMORANDUM TO MR. KENNETH A. MCLEAN, FROM RICHARD L. D. MORSE—RE: REPLY TO VANCIL TESTIMONY, PAGE 1100–1110, TRUTH IN LENDING, 1963–4 PART 2

1. Vancil restricts his testimony to the single question of the accuracy of the calculation of a 'simple annual rate' as provided under the terms of S. 750. And he limits his attention to revolving charge accounts.

His concern has been made *obsolete* by S. 5 because it does not require calculation of the simple annual rate. S. 5 requires disclosure of the periodic rate, its annual rate equivalent and the base to which the rate applied.

2. If Vancil were to testify on S. 5, he would favor it:

On page 1104 (mid-page) he says, "but I think the important thing to be disclosed to the consumer here is that the department store bases its charges on the balance in the account at the beginning of the month, it does not base its charge on the average daily unpaid balance."

He continues in same vein and concludes, "and I think disclosures ought to emphasize that the charge is made at a point in time rather than on the average unpaid daily balance."

After the Chairman's efforts to defend S. 750 as meaning exactly what Vancil held to be important, Vancil correctly responds that the bill (750) requires the *yield* expression to be determined "after the fact" (p. 1105) producing rate depending on the timing of the transactions during the month. Then he reinforces his concept: "But even more importantly, such a computation is not *operationally useful to the consumer. . .*" (italic mine).

On page 1109 he reiterates his opinion as to what constitutes adequate disclosure.

3. Vancil further assists the case for S. 5 by distinguishing "service charges" from "interest." On point No. 2, page 1108, he points out the difference in concepts: Interest is for the use of money over time; service charges are levied on the unpaid balance of the account at that date. Thus he says, there is no simple way of relating the service charge to an annual interest rate without going

through the rigors of computing "dollar days," "average daily unpaid balance" and the "simple annual rate."

The Proxmire bill circumvents these semantic problems by using its own defined terms: "finance charge," "periodic rate of finance charge" and "annual percentage rate."

4. Vancil is much more restrictive than Proxmire. Vancil seems to believe the proper balance base should be the balance at the beginning of the next month. And he prefers a monthly rate.

S. 5 gives the retailer freedom (1) to select his own period—daily, weekly, monthly, quarterly. . . (2) to select the base of his own choosing.

Morse shows that the same periodic rate, applied to the same billing can produce as many as six different costs (page 26–27 in Truth in Lending). The only way to curb this lack of uniformity in costs would be to prescribe a uniform method of retail accounting. Opponents will seize upon this observation as proof that S. 5 does not tell the truth.

Although freedom provided by S. 5 for each retailer to declare his own method of calculating his base will result in different costs, S. 5 does give the consumer operational information, that is, (1) information needed for making rational decisions regarding alternate uses of his money (2) information needed to check the accuracy of the store by recalculating the charge. (Likewise, consumers can utilize the price per pound quoted on fryers, roasting turkeys, and chuck roasts—each yielding different numbers of servings at different costs).

5. Is 1½% per month 18% per year? This question is raised on page 1105. Vancil says, "you can state the monthly service charge as an annual rate," but he goes on to say, "it is not the actual rate." This gets back to the recurrent problem of nominal or stated rate vs. the actual or effective rate. The Proxmire Bill is clear on this score whereas S. 750 was not!

6. He confronts Senator Bennett with evidence that even without the free period, the effective rate may be higher than 18%. (See page 1105). I will not discuss this further since S. 5 is not concerned with the effective rate.

In summary, Vancil presents a good case for S. 5; (1) He illustrates the horrendous task of computing average daily unpaid balances which S. 5 would not require. (2) He declares in favor of information operationally useful to the consumer, which S. 5 would provide. (3) He distinguishes interest from service charges, and S. 5 uses neither term. (4) He prescribes by implication only one method of figuring the service charge: 1½% of the previous month's ending balance with no allowance for credits or returns unless the balance is fully paid. S. 5 is much more liberal, requiring that the retailer only declare the period, the periodic rate and the base to which it is applied. So S. 5 frees retailers to accommodate their customers, their accounting system, and their concept of good merchandising, yet gives the consumer the operational information needed for decision making. (5) Vancil makes a good case for not yielding to requests that S. 5 be amended to disclose the actual rate on some average of daily unpaid balances. If such were made, Vancil and a host of other NRMA friends would be ready to testify against it. Their motive is not to improve the bill, but to set a noose for hanging S. 5.

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4. Revolving Credit

Responsible critics of S. 2755 and S. 1740 requested that special recognition be given to open-end or revolving credit. Under this form of credit arrangement both parties know before entering into an agreement: the maximum amount of credit that can be extended, the rules for repayment of whatever credit is extended, and the rate of charge to be applied to an unpaid balance of credit to compute the finance charge. But not until *after* the credit has actually been extended would either party know the amount of credit used, and, therefore, the amount of finance charge. Thus, pleaded the critics with justification, any bill which required prior disclosure on all forms of credit was unrealistic with regard to revolving credit.

The problem was partially remedied on April 21, 1962 by creating in the Committee Print of S. 1740 (which became S. 750) Section 4(b) for revolving or open-end credit. The effort was only partially successful because of the word "yield" in Section 4(b)(F): "The simple annual percentage rate or rates providing a yield equal to the finance charge imposed."

The yield concept was deleted in S. 2275, *but no hearings were held on S. 2275. Thus most of the objections to revolving credit disclosure, as recorded in the hearings are irrelevant.* Furthermore, many of the objections raised against S. 2275 and S. 750 would *not apply to the provisions of S. 5.*

COMPARISON OF TRUTH IN LENDING BILLS

DISCLOSURE OF FINANCE CHARGES

S. 2755 86th 2nd (Original Bill) Jan. 7, 1960	S. 2755 86th 2nd (Committee Print) May 3, 1960	S. 1740 87th 1st April 27, 1961
Section 3. Any person engaged in the business of extending credit shall furnish to each person to whom such credit is extended, prior to the consummation of the transaction, a clear statement in writing, in accordance with rules and regulations which the Board of Governors of the Federal Reserve System shall prescribe, (1) setting forth the total amount of the finance charges to be borne by such person in connection with such extension of credit, and (2) stating the percentage that such amount bears to the outstanding principal obligation, or unpaid balance, expressed in terms of simple annual interest.	Section ~~3~~, 4. Any ~~person engaged in the business of extending credit~~ creditor shall furnish to each person to whom ~~such~~ credit is extended, prior to the consummation of the transaction, a clear statement in writing, setting forth, to the extent applicable and in accordance with rules and regulations prescribed by ~~which~~ the Board ~~of Governors of the Federal Reserve System shall prescribe~~, the following information — (1) the cash price or delivered price of the property or service to be acquired; (2) the amounts, if any, to be credited as downpayment and/or trade-in; (3) the difference between the amounts set forth under clauses (1) and (2); (4) the charges, individually itemized, which are paid or to be paid by such person in connection with the transaction but which are not incident to the extension of credit; (5) the total amount to be financed; (6) the finance charge expressed in terms of dollars and cents; and (7) the percentage that the finance charge bears to the total amount to be financed expressed as a simple annual rate.	Section 4. Same as 2755. (1) Same as 2755 (2) " " " (3) " " " (4) " " " (5) " " " (6) " " " (7) the percentage that the finance charge bears to the total amount to be financed expressed as a simple annual rate on the outstanding unpaid balance of the obligation.

Contract Credit - COMPARISON OF TRUTH IN LENDING BILLS (con't)

S. 1740 87th 2nd Committe Print April 21, 1962	S. 750 88th 1st Jan. 15, 1963	S. 2275 89th 2nd July 12, 1965	S. 5 90th 1st Jan. 11, 1967
Section 4. (a) Except as provided in subsection (b), any creditor shall furnish . . .	Same as S. 1740	Section 4. Same as S. 750 with and ascertainable inserted after the words: "extent applicable".	Section 4. Same as S. 2275
(1) " " "		(1) Same as S. 750	(1) " " "
(2) " " "		(2) " " "	(2) " " "
(3) " " "		(3) " " "	(3) " " "
(4) " " "		(4) " " "	(4) " " "
(5) " " "		(5) " " "	(5) the total amount to be financed; (the sum of the amounts set forth under (3) and (4), above);
(6) " " "		(6) " " "	(6) the finance charge ~~expressed~~ in ~~terms of~~ dollars and cents; ~~and~~
(7) the percentage that the finance charge bears to the total amount to be financed expressed as a simple annual rate on the average outstanding unpaid balance of the obligation.		(7) Delete - ~~average outstanding~~ Insert - periodic	(7) the finance charge expressed as an annual percentage rate to be computed as set forth in section 3 (5); (8) the time and amount of payments scheduled to repay the indebtedness; and (9) the terms applicable in the event of advanced or delayed payments from those specified in (8) above.
			Section 3. As used in this Act, the term -- (5) "Annual percentage rate" means the percentage rate per period expressed as a percent per annum. It shall be computed by multiplying the percentage rate per period by the number of periods per year. (6) "Percentage rate per period" means the percentage ratio of the finance charge for the period for which the charge is made to the unpaid balance of the total amount to be financed. (7) "Period" means the time interval between the payments specified in the credit agreement for repayment of the total amount to be financed.
Sec. 5. Regulations provided for the Board to describe "the methods which may be used in determining the 'simple annual rate' or 'simple annual percentage rates' for the purpose of Sec. 4."		Same as S. 750	Section 5. Regulations. Rephrased giving the Board duty to describe "the methods which may be used in determining the annual percentage rate.

Revolving Credit - COMPARISON OF TRUTH IN LENDING BILLS (con't)

S. 1740 87th 2nd Committee Print April 21, 1962	S. 750 88th 1st Jan. 15, 1963	S. 2275 89th 2nd July 12, 1965	S. 5 90th 1st Jan. 11, 1967
Section 4. (b) Any creditor agreeing to extend credit to any person pursuant to a revolving or open-end credit plan shall, in accordance with rules and regulations prescribed by the Board and in lieu of the information described in subsection (a) - (1) furnish to such person, prior to agreeing to extend credit under such plan, a clear statement in writing setting forth the simple annual percentage rate or rates at which a finance charge will be imposed[1]; and (2) furnish to such person, at the end of each monthly period (which need not be a calendar month) following the entering into of any such agreement, a clear statement in writing setting forth[2] - (A) the outstanding balance in the account of such person as of the beginning of such monthly period; (B) the amount of each extension of credit to such person (including the cash price or delivered price of any property or service acquired by such person) during such period, together with[3] the date thereof and a brief identification of any property or services so acquired; (C) the total amount received from, or credited to the account of, such person during such period; (D) the finance charge (in dollars and cents) required for such periods; (E) the outstanding balance in the account of such person as of the end of such monthly period; and (F) the simple annual percentage rate of rates providing a yield equal to the finance charge imposed. As used in this subsection, the term "revolving or open-end credit plan" means a credit plan under which the total amount of credit to be utilized, the dollar amount of the finance charge to be assessed, and the amounts and times of repayment are not specified at the time an agreement to extend credit pursuant to such plan is entered into.	Same as S. 750 with amendments as noted: [1] Insert: on the monthly balances [2] Insert: to the extent applicable and ascertainable [3] Delete: ~~together with~~ Insert: and unless previously furnished (F) Delete: ~~providing a yield equal to the finance charge imposed~~ Insert: at which a finance charge has been imposed on the monthly balance. Definitions same as shown under S. 5	Section 4. (b) Any creditor agreeing to extend credit to any person pursuant to a revolving or open-end credit plan shall, in accordance with rules and regulations prescribed by the Board ~~and in lieu of the information described in subsection (a)~~ - (1) furnish to such person, prior to agreeing to extend credit under such plan, a clear statement in writing setting forth the ~~simple annual percentage rate or rates at which a finance charge~~ will be imposed ~~on the monthly balance; and~~ following information: (i) the periodic dates of the balances against which a finance charge will be imposed; (ii) the percentage rate per period of the finance charge to be imposed; and (iii) the periodic rate of finance charge expressed as an annual percentage rate. (2) furnish to such person, ~~at~~ as of the end of each ~~monthly~~ period ~~(which need not be a calendar month)~~ following the entering into of any such agreement, a clear statement in writing setting forth to the extent applicable and ascertainable -- (A) Same as S. 2275 with "monthly" deleted. (B) " " " (C) " " " (D), (E), & (F), From S. 2275 deleted (D) the outstanding unpaid balance in the account of such person as of the end of such period; (E) the annual percentage rate used to compute the finance charge for such period; (F) the balance on which the periodic finance charge was computed; and (G) the finance charge (in dollars and cents) imposed for such period. As used in this subsection, the term "revolving or open-end credit plan" means a credit plan prescribing the terms of credit transactions which may be made thereunder from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder.

In my judgment, those who declare S. 5 to be misleading or uninformative do not do themselves or the many responsible retailers and financial institutions justice. Many of these institutions are now quoting monthly rates. And since the annual rate is merely 12 times the monthly rate it is a matter of simple arithmetic and not a matter of substance as to what the rate reveals. Thus one who argues that the 18% disclosure is misleading is also arguing that the prevailing practice of quoting monthly rates is misleading. S. 5 requires no change in present bookkeeping or accounting procedures! It presents only a printing problem, and then only until present forms are out of stock. If present practices are deceptive or misleading, S. 5 will not correct them.

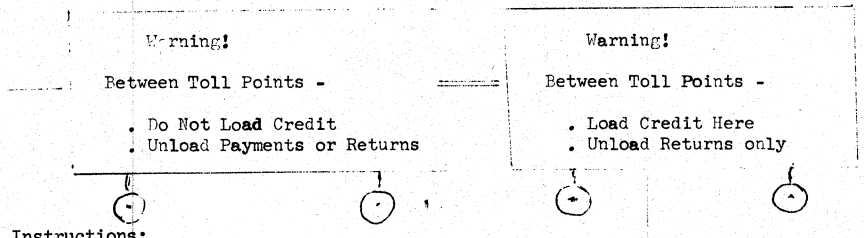
Before I introduce my problem I should like to repeat what Secretary *Barr* said: "It is not important that the consumer buys a shirt on the third of April, is billed on the 17th of April, and has until the 17th of May to pay without incurring any credit charges. This is a cash transaction up to that point. *The point at which it becomes a credit transaction,* so far as the purpose of this bill is concerned, *is the point at which the consumer becomes subject to credit charges.* This is the only thing that concerns him. He surely is not going to borrow elsewhere to pay off his revolving credit, unless it is to avoid paying service charges. This is why I say that revolving credit is the simplest kind of credit to handle for the purposes of this bill. *If the store charges 1½% per month, the annual percentage rate is 12 times 1½% or 18%.*"

THE PENNY WAY*

Assume a toll road situation wherein distance corresponds to time in a revolving credit account situation.

The Set-up:

1. Given two empty cars, a front and rear car.
2. Starting point is the first day of a billing period. It is 30 day-units before the first toll point.
3. Toll points are 30 or 31 day-units apart.
4. Unloading of either payments or returns may be made between toll points; purchases may be made at any point and loaded on the second car only.
5. No toll keeper between toll gates. Toll keeper has no control over when the consumer opts to unload.
6. Instructions for use of cars is as posted:



Instructions:

1. Pay toll charge at rate of 1-1/2% of load in front car. (Note: At the first toll gate, the front car will always be empty.)
2. Immediately, credit load must be shifted from 2nd car to 1st car. First car is accessible to the credit user (and not credit vendor) and then only for the purpose of discharging some or all the load a the option of credit user.
3. Pick up from the toll gate keeper a punch card notifying that at the next toll gate a service charge of 1-1/2% will be levied on the front car load less any unloading by payments or returns he opts to make along the way.
4. Proceeds to next toll point, unloading from front car at option.

* Response by Richard L. D. Morse to the Statement of W. M. Batten before the Subcommittee on Financial Institutions, Senate Committee on Banking and Currency on S. 5, Monday, April 17, 1967.

(Despite warnings, returns may be unloaded from whichever car it is in, and if from the rear car, equivalent credit may be shifted from front to rear car.)

5. Return to Step 1 at each successive toll gate.

What is the rate?

- There are two rates:
  - Notification rate. (See instruction 3).
  - Collection rate. (See instruction 1).
- Notification rate equals 1-1/2% per month or 18% per year. The free ride may be 1 day unit to 30 day units in the second car; and at his option up to another 29 days in the first car.
- Collection rate is equal to the sum of tolls at each of the 12 successive gates divided by total of the loads in the front cars as measured at each gate when the total is paid.
- Difference between notification and collection rates:

Case 1 - If there is no change in load, the notification rate of $1.50 per $100 would be 12 x 1.50 or $18 per $100 at end of 12 successive units, or equivalent to 18% for a 12-unit segment; (or 19.6% per year if not paid at each gate, but added to the load).

Case 2 - If there is total discharge of the front car before each of the 12 toll gates, collection rate equals 0, but notification rate equals 18%.

Case 3 - If there is partial unloading from the front car, notification rate is 18%; collection rate will vary between 0 and 18 depending on the use of unloading options.

S. 5 requires disclosure of the notification rate which is always 18%. The creditor may receive or the consumer may pay at any rate between 0% and 18% depending on the use of the unloading options:

Observations Regarding Penney's

1. Their "effective" rates assume toll keepers are stationed at every day unit along the route. This is not in accordance with the set-up, nor does it correspond to any present-day commercial practices.

2. Penney's does function according to the set-up, using a monthly notification rate of 1-1/2% which, expressed annually, is 18%.

3. Since Penney's has no control over the consumer's use of their options to unload the debt between toll points, the only rate they can quote with validity is the notification rate.

4. Only the consumer can cause the collection rate to be lower than the notification rate. The bill should require disclosure of this option so the consumer can cause the collection rate to vary from the notification rate if it is his wish. This is an implied responsibility in subsection (F).

Conclusion:

S. 5 does provide meaningful and useful information for the consumer for making rational decisions.

Post Script - The set-up described above is that of Method II listed on pages 26-7 of Morse's Pamphlet 17 "Truth in Lending". In all cases the notification rate is 18%; the dollar costs range upward to almost 100% greater than the Penney Way. Other billings would show other dollar cost differences, as noted in footnote #3 on page 24. However, under many of these methods, a consumer approaching the toll gate could afford to borrow at rates much higher than 18% to avoid charges. For example, if the consumer in April under Method IV had paid $49.99 more, he would have needed only 1¢ more to avoid the 90¢ service charge. Because he failed to pay the full $60 for lack of the 1¢, he was charged 90¢. Had he had the penny one day earlier, he could have offset his 90¢ charge, and thereby would have earned a return on the penny of 9,000% per day or over 3 million per cent per year without compounding. Or, if he had waited the 29 days, the rate would still be over 100,000%.

From this perspective, the nominal "notification" rate of 18% is not an over-statement; it is the only statement that can be quoted which is meaningful and operationally useful to the consumer.

III. ALTERNATIVES

I wish to conclude this testimony by pointing out the alternatives for public policy. If you pass the bill in essentially its present form, you will provide a standard of disclosure that will be universal throughout the common market of these United States. It will expedite the excellent work of the Committee preparing the Uniform Consumer Credit Code by relieving them of what is, for them, a most difficult decision. Consumer education can become much more effective once the terms of credit are defined and made meaningful. The rates will stimulate a more price competitive market. And as the market comes to recognize the legitimacy of rates up to 36% and 42% there will be greater opportunity for differentiation by loan customers. The administering agency can proceed directly in accordance with Section 5(c) to establish an advisory committee. With their advice and counsel it can exercise its powers to prescribe reasonable tolerances of accuracy, and to make rules and regulations consistent with the bill. I feel certain that with the bill passed the experts of the finance industry will be extremely helpful in developing workable procedures.

The alternative is to maintain the status quo. I hope this will not prevail. I can best tell you why if you allow me to share some of my experiences. As a conscientious consumer, student, and teacher, I have taken time whenever I could to learn about credit. This has taken much time. Unlike many of my consumer friends I can justify the investment cost that persistent inquiry involves because I need to know about such matters to keep informed as a teacher. Nevertheless I wish to emphasize that there is a tremendous cost in being a responsible consumer, and I feel this bill would reduce that cost.

1. In my 1960 testimony I told of my efforts to help my secretary understand her car refinancing terms. She was dealing with a large reputable national car financing firm. This resulted in 15 letters, long distance calls, and a 100 mile trip. Had S. 5 been in effect at that time, none of this expense would have been necessary. Incidentally, as the facts were made known, an error in arithmetic was discovered.

My second experience was in regard to revolving credit. I wanted to learn how it worked, so I sent students to find out. We developed a billing sequence so we would have comparable data. One large chain refused to work out the problem, and their literature was not clear with respect to such words as "small service charge" or the "unpaid balance". I had a credit card with this company and knew the credit manager, so I made inquiry and was also told it was policy not to supply such information. So I brought some shirts, charged them on my revolving credit account, allowed my bill to accumulate, and sent the problem along with my payment. The letter ended up not at the regional office, but was answered by the national office. Had S. 5 been in effect then, I would not have been such a nuisance. The information they would supply as a standard procedure would have enabled me to get the information *as a RIGHT* and not a courtesy.

My last example is less pleasant. Dr. Johnson writing in a journal article had raised a question concerning the legality of a situation Miss Courter and I hypothesized in our artice, "Are Credit Terms Quoted Accurately?":

> And, often this dollar add-on is not advertised in dollars, but deceptively as a percentage. Only the very sophisticated consumer can recognize an advertised 5% car loan to be the equivalent of 9.5% simple interest.

I referred the matter to the Attorney General of Kansas who in 1964 advised that the advertisement of a dollar add-on-rate as a percentage or percentage discount is clearly misleading within the meaning of Kansas statute. Furthermore, he invited me to advise him if I knew of any such instance.

A month later I noticed a billboard advertisement of a bank 5% car loan. I sent him a picture of it. Last August, over two years later, I noticed this same bank was advertising an offer to borrow at 5% and lend at 5%. I took a picture of this situation and used it for the cover of Pamphlet #17.

Now, it is not my proper role as a professor to engage in policing the market, so it seemed inappropriate for me to institute legal action. However, this is not an isolated case. In the June 29, 1964 issue of *U.S. News and World Report* page 85–6 there was a feature article on a report of the Consumer Advisory Council. In the course of this interview I struck boldly at the bank advertisements of 3% car financing then current.

Although this bill makes no provision for the regulation of advertising, it does establish a standard appropriate factual disclosure. As such it will create an attitude of expectation that will make such advertising less likely.

In conclusion, it seems to me that your choice is to allow the present system to endure with its 50% or 100% error, or, pass this legislation which narrows this error to a workable tolerance.

STATEMENT BY MRS. ESTHER PETERSON, SPECIAL ASSISTANT TO THE PRESIDENT FOR CONSUMER AFFAIRS

I have just received seven resolutions passed by the Consumer Advisory Council at its meeting here yesterday. These resolutions shall receive full consideration, both by my office and the President's Committee on Consumer Interests.

The resolutions are attached.

ADOPTED RESOLUTIONS OF THE CONSUMER ADVISORY COUNCIL

1. CREDIT DISCLOSURE

The rapid rate of consumer credit growth, the many innovations in credit forms, and the segmental approach to credit regulation has resulted in considerable confusion. Therefore, the Consumer Advisory Council recommends that the Special Assistant to the President for Consumer Affairs bring together representatives of all Federal agencies exercising regulatory control over consumer credit lending and consumer credit extending institutions for the purpose of establishing such standards of full disclosure of credit charges as consumers need to make intelligent credit decisions. We further recommend under those portions of these proposed standards which could be put into effect under existing authority, and those provisions which would require new legislation be separately designated.

In no sense does the Council consider this procedure as a substitute for the truth-in-lending legislation, which the Council continues to feel is a matter of the highest priority.

2. COLLEGE LOAN RATE DISCLOSURE

The Consumer Advisory Council takes cognizance of the rising costs of college education and the consequent financial burden this places upon those who must bear this cost. One means of carrying the burden for some families is a student loan. It is gratifying to note the recent substantial increase in the volume of funds available for such loans from various sources.

The Consumer Advisory Council is disturbed, however, by the very high interest rates charged for college loans by some financial institutions and, especially, by the failure to disclose rates forthrightly.

The Consumer Advisory Council recommends that colleges and universities which allow the name of the institution to be associated in any way with such loan funds should condition their association by requiring the credit lender to disclose publicly the loan cost and rate (in simple annual rate terms), the cost and effective premium rate for each type of insurance coverage, and such other costs as may be included.

The Consumer Advisory Council further recommends that the Special Assistant to the President for Consumer Affairs take responsibility for securing the preparation and publication of an analysis of major national and regional commercial and publicly supported college loan programs currently offered, including disclosure of the loan cost and rate (in simple annual terms), the cost and effective premium rate on each type of insurance coverage provided, and such other costs as may be included.

The Consumer Advisory Council urges that guidance counselors in the secondary schools of the nation inform themselves of such analyses in order to be in a position to advise with students on the financing of their college education.

3. REGULATION OF RATE STATEMENT

The Consumer Advisory Council is concerned by misrepresentation of the cost of credit by banking institutions stating the cost as an add-on or discount percentage rate. The Federal Trade Commission has ruled this to be a deceptive trade practice and the courts have upheld the principal involved. However, commercial banks are exempt from Federal Trade Commission jurisdiction, as are transactions not in interstate commerce, leaving an inconsistency in existing prohibitions. Another gap is reflected in the recent opinion of the Attorney

General of Kansas that such advertisements are misleading. The jurisdiction of his office over the practices of National Banks is not as clear as that of the Federal agencies, thus again leaving an inconsistency in existing prohibitions.

Therefore, the Consumer Advisory Council recommends that Mrs. Peterson direct letters of inquiry to all those Federal agencies which have some administrative authority over the National and other banks, asking each to reply by August 15.

1. Can they issue regulations which would bar National and other banks from representing the cost of credit as an add-on or discount percentage rate? If not, why not?

2. What specific legislative authority would be needed to sustain such regulations?

3. What administrative agency other than their own presently has authority to effect this prohibition?

Among those to whom this letter should be directed, should be the Comptroller of the Currency, Chairman of the Federal Reserve Board, and Chairman of the Federal Deposit Insurance Corporation.

4. NATIONAL BANKS

It is the understanding of the Consumer Advisory Council that *National Banks* are required to comply with existing State anti-usury laws or other State laws establishing maximum credit charges for various types and classes of credit transactions.

Furthermore, it is understood that the State officials do not have the right of visitation in regard to National Banks to insure that State laws are being complied with.

Therefore, in behalf of consumers who use the services of the National Banks throughout the Nation, the Consumer Advisory Council wishes clarification regarding their protection by the Federal agencies concerned, and requests the Special Assistant for Consumer Affairs to obtain the following information:

1. Do the standard procedures of Federal examiners of National Banks include the examination of individual consumer notes to insure that:
   a. the State laws are being complied with, and
   b. the consumer is not being charged in excess of the terms of the note

2. How many cases have been reported in the past five years of noncompliance with State laws in regard to rate of charge?

3. What action has been taken in respect to any such violation of State laws which have been discovered?

4. If a loan is discovered to be contrary to State law, what steps are followed to inform the consumer involved so he may seek appropriate legal remedies?

5. What remedies does a consumer have under Federal law if a loan contrary to applicable State law is discovered by the examiners?

6. And, how recently was there a policy-level discussion of these matters by the agency? Are there any position papers available for study?

Furthermore, in order that the Consumer Advisory Council may be better informed concerning the consumers position in securing consumer credit from *National Banks*, the CAC requests Mrs. Peterson to secure from the Comptroller of the Currency a compilation of the information used by bank examiners to determine compliance with anti-usury statutes in each of the states.

1. The maximum rate that may be charged on contract single payment and installment payment loans, and on open credit revolving credit accounts. If the rate is expressed in a form other than a simple nominal annual rate, this should be noted.

2. The method by which examiners compute in each state the rate from the dollar off charge if the statute limiting the charge uses a rate expression.

3. Those charges which are considered incident to the loan and those which are not, for the purpose of distinguishing interest from other charges.

The Consumer Advisory Council requests that this be directed to all the Federal agencies which have direct or indirect regulatory authority over the National Banks, particularly, Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation.

5. CLOSING COSTS

The Consumer Advisory Council has taken cognizance of the wide variation in Closing Costs assessed in Federally financed home purchases. It notes, furthermore, that the charges are widely different for essentially the same services.

In the interest of preventing abuses in closing cost charges, the Consumer Advisory Council recommends that the Special Assistant for Consumer Affairs request reports from the Federal Agencies concerned, particularly the Housing and Home Finance Agency, the Home Loan Bank Board, the Veterans Administration, the Board of Governors of the Federal Reserve System, and the Comptroller of the Currency which will:

(1) appraise present practices, and

(2) formulate those policy recommendations which can be implemented under present legislative authority, and other recommendations which would require specific legislation.

6. BANKRUPTCY AND INSOLVENCY

The Consumer Advisory Council has noted with alarm the rise in consumer bankruptcies, the lack of uniformity in use of chapter XIII throughout the Nation, the abuse of wage assignments and garnishments and the failure of contracts to convey meaningfully to credit users essential facts in the credit contract and their rights and responsibilities as creditors.

At its March 1963 meeting, the Consumer Advisory Council recommended research into the manner in which families use credit, and into the causes for misuse of credit leading to bankruptcy and debt adjustment. And, in December 1963, the Consumer Advisory Council included in its stated scope of activity for the coming year, study of "the social pathology of consumer credit addicts."

There is growing interest in and concern about consumer credit. Suggestions have been received by Mrs. Peterson indicating that those directly concerned with bankruptcy, namely, the referees and trustees in bankruptcy could contribute greatly to and would participate in a conference concerned with the debtor.

The Consumer Advisory Council recommends, therefore, that a Committee of the Federal referees in bankruptcy, trustees in bankruptcy for wage earners plans, representatives of the Department of Labor concerned with garnishment and wage assignment, representatives of the Housing and Home Financing Agency, the Veterans Administration and from the Bureau of Federal Credit Unions be formed and that a conference be called to:

1. formulate recommendations regarding revision of the Bankruptcy Act
2. review wage assignment and garnishment practices and recommend model legislation
3. develop a uniform credit contract form
4. appraise the variety of methods by which the credit eligibility of a consumer is assessed, and recommend improvements
5. suggest improved methods for meeting the credit needs of low income families.

7. PESTICIDES

(Not relevant to credit.)

AUGUST 5, 1967.

From: Richard L. D. Morse
Subject: Suggested amendments to Title II of H.R. 11601.

H.R. 11601 presents a significant improvement over S. 5 as passed by the Senate. The purpose of this memorandum is to call attention to specific portions of H.R. 11601 which do not fully meet the declared purpose of the bill. It is recommended, therefore, to:

1. Delete on page 5 sec. 202 (d) (1) (A)

Reasons

(1) "fees and charges . . . for determining . . . perfecting . . . or releasing or satisfying any security related to a credit transaction" are clearly an incident to the extension of credit.

(2) The purpose of H.R. 11601 is not to reveal creditor's profit margins, but to enable consumers to comparison shop. Lower rates could be quoted by creditors who reduce the risk of inferior collateral by so *perfecting* the security at the expense of the consumer. This extra cost complicates comparison shopping and shifts to the consumer the cost of perfecting the security.

(3) If creditors bear the cost, they will be less inclined to burden public officials with unnecessary paper work; they will incur this cost only for doubtful cases, that is, for risks higher than those normal to the creditor's type of operations.

2. Change on page 5 subsection (B) to read subsection (A) of sec. 202 (d) (1).

Reason

(1) Cash buyers would pay taxes. Taxes are not an incident to credit.

3. Add new subsections (B), (C) and (D) to sec. 202(d)(1):

"(B) insurance against liability arising out of the ownership or use of property related to the credit transaction if the creditor has no economic or controlling interest in the insuring company or its agencies, or if the creditor receives no commission payable directly or indirectly for the sale of such insurance coverage; and

"(C) credit life, health and accident or other insurance on the obligor, if not required by the creditor as a condition for obtaining credit, or if the creditor has no economic or controlling interest in the insuring company or its agencies, or if the creditor receives no commission payable directly or indirectly for the sale of such insurance coverage; and

"(D) charges which are reasonable in relation to the benefits conferred on the obligor if they are of commensurate value to the obligor apart from the granting of credit and if they have been approved by the Board by rule or regulation.

Reasons

(1) Such insurance coverage primarily protects the obligor and he should have the option of carrying it.

(2) If the creditor chooses to make such insurance available or to finance its cost, he may do so.

(3) However, limitations are imposed to remove the temptation to offer credit services at a loss with the intention of recovering through profits on insurance.

(4) The Board should be authorized to broaden the exemptions from time to time.

4. Delete on page 5 subsection "(E) appraisal fees" and on page 6 "(F) credit reports" of section 202(d)(2).

Reason

(1) Both are an incident to credit and are not customarily incurred by a cash buyer.

5. Delete subsection (A) and substitute for (C) in sec. 202(F)(1):

(C) All payments are scheduled at equal intervals if all payments are so scheduled except the first payment, which may be scheduled to be paid before, on, or after one period, and if the number of payments is adjusted for such irregularly scheduled first payment by subtracting (if before) or adding (if after) the nearest number of full period equivalents in double the time by which the first payment differs from a full period.

Reasons

(1) Subsection (A) is not necessary.

(2) The substitute wording for (C) provides a more appropriate correction for deferred payments. A 3-month deferment would have been treated as one month, but more correctly as 6 months under the substitute wording.

6. Delete the words "or rates" on lines 10 and 11 of page 7 in section 202(f)(3).

Reasons

(1) Multiple rates, step rates or graduated rates should not be tolerated since they are contrary to the purpose of the bill: "To assure a meaningful disclosure of credit terms so that the consumer will be able to compare . . . credit terms . . ."

(2) Creditors choosing to employ graduated rates to compute the finance charge would disclose this system as their method under 203(d)(2)(B) on page 12, but would express the rate as required under 203(d)(3)(E) as a single blended rate.

(3) In practice, creditors using graduated rates would use a series of single rates applicable to specific levels of total indebtedness, for example:

18% if the balance is $500 or less
17% if the balance is between $501 and $600
16% if the balance is between $601 and $700
15% if the balance is between $601 and $700
9% if the balance is $1,500 or more

7. Substitute on page 9 for sec. 203(b)

"(6) The amount of the finance charge (such charge or charges shall be itemized, showing those charges which are an incident to credit extension and not required of cash paying consumers)."

Reasons:

(1) There is no need to introduce time-price differential terminology.

(2) Itemization of charges is informative for the consumer who wants to know.

(3) The criterion for finance charges is established.

8. Substitute for the second sentence beginning on line 3 of page 10:

"Compliance shall be attained (1) by disclosing the annual percentage rate to any prospective consumer or in any advertising of the finance charge or rate, and (2) by disclosing such other information as is required in the contract or other evidence of indebtedness to be signed by the obligator."

Reason:

(1) The consumer who shops for credit needs to know the rate; the consumer needs to know the cost and payment terms before signing a contract.

The motorist presents an analogous situation: When driving down the highway, price per gallon quotations are meaningful and adequate. However, once he has selected a station, the rate becomes secondary in importance to total cost and payment terms.

9. On page 10, line 25, add: "and an itemization of "the charges".

10. On page 11, line 9 substitute the following sentence:

"Compliance shall be attained (1) by disclosing the annual percentage rate to any prospective consumer or in any advertisements, and (2) by disclosing such other information as is required on the note or other evidence of indebtedness to be signed by the obligor."

11. On page 12, subsection (C) of Section 203(d)(2) delete all words following the words "finance charge" on line 7.

Reasons:

(1) "Installment open end credit" appears no where else in the bill; it should be deleted here.

(2) The words in parenthesis tend to give legal sanction to a practice that can be treated better by the regulatory authority. The use of minima and fixed charges could be so abusively used as to render the rate insignificant.

12. On page 13 subsection (D) of 203(d)(3), delete all words on lines 2 to 5 after the word "period".

Reason:

See number 11.

13. On page 13 substitute for (E) of 203(d)(3): "(E) the periodic percentage rate, and its equivalent annual percentage rate, applied to the balance to compute the finance charge for that period."

14. On page 14 add at the end of section 203(f) line 13: "The % symbol shall represent an annual percentage rate, unless another time period is explicity and clearly designated."

Reason:

This confirms the customary use and interpretation of the % sign.

15. On page 15, 203(j);(1), substitute for (A) and (D)

"(A) the cash sale price or total amount of credit extended,"

"(D) the time sale price, if a credit sale, and"

Reason:

(1) Since this is intended to apply to both loans and credit sales, the wording needs to be broadened.

16. On page 17, line 9, section 203(1)(2):

Delete: "18 per centum per annum"

Substitute

"0.15 per centum per day, or

"1.0 per centum per week, or

"4.5 per centum per month, or

"50.0 per centum per annum".

Reason:

The 18 per centum rate is unreasonably low. These rates would give full disclosure opportunity to operate without the interference of ceilings.

17. On page 18, Sec. 204(b), some revision of the tolerances is needed for clarification:

Delete on line 20 all after the word "installments." On page 19, change (2) to read: "(2) The use of rate tables or charts may be authorized. Such tables or charts . . ."

Reason:

This will eliminate any question as to how the creditor arrived at the quoted rate which is quite incidental to its accuracy. This establishes a method for rounding up figures, authorizes the use of tables, and establishes a tolerance for the tables.

19. Page 24, line 2, insert a modifying word so as to limit the excessiveness of this amount. Insert "not excessively greater."

[From the Washington Daily News, June 11, 1964]

PROBE ASKED ON HIGH COST OF CREDIT

(By William Steif)

The President's Consumer Advisory Council has told the White House official in charge of consumer affairs to probe the high cost of credit.

In six resolutions passed yesterday, the 12-member council asked Mrs. Esther Peterson, Special Assistant for Consumer Affairs, to:

Set up "standards of such full disclosure of credit charges as consumers need to make intelligent decisions."

Crack down on "the very high interest rates charged for college loans by some financial institutions and the failure to disclose rates forthrightly."

Look into "possible abuses" in "closing costs, assessed home purchasers."

Call a conference of Federal executives because of "the rise in consumer bankruptcies, the abuse of wage assignments and garnishments and the failure of contracts to convey meaningfully essential facts to credit users."

Find out what laws are needed to close a gap in regulation of bank credit.

Ask that national banks obey state anti-usury laws.

In two days of meetings here, the CAC also drafted resolutions indorsing an Administration inquiry into the Food Distribution Industry, the President's anti-poverty program and the pesticide regulation bill introduced by Sen. Abraham Ribicoff (D. Conn.).

The Council suggested Mrs. Peterson "bring together representatives of all Federal agencies" regulating loans to set up the standards. Once standards are established, the Council urged quick application of "provisions which could be put into effect under existing authority." A new law might be needed for other provisions.

The council's interest in home buyers' closing costs was triggered by the "wide variation" in such cost around the U.S. "for essentially the same services." The CAC asked Mrs. Peterson to get data from Federal Housing Agencies for recommendations on new laws.

"Misrepresentations of the cost of credit" by banks "concerned" the Council too. It pointed out the Federal Trade Commission ruled some ads "a deceptive trade practice," but "commercial banks are exempt from FTC jurisdiction, leaving an inconsistency" in Federal law.

[From Changing Times, June 1967]

HOW MUCH YOUR MORTGAGE REALLY COSTS—THESE TABLES SHOW WHAT RATE YOU ACTUALLY PAY WHEN YOU'RE CHARGED INTEREST PLUS "POINTS"

In times of scarce or "tight" money, a person who wants to buy or sell a house may find himself required to pay the money lender a commission, commonly known as a "discount" or as "points." A point is a one-time charge equal to 1% of the loan and, in most places, is considered a perfectly legal way for a lending institution to boost its return without violating the legal ceiling on interest rates. Points may be charged to the buyer, the seller or to both.

When a *borrower* pays points, the money is, in effect, deducted from the total amount of the loan he is seeking. Thus, for example, if he is paying four points on a $20,000 loan, he actually gets only $19,200 ($20,000×.04%=$800) but has to pay interest on the full $20,000. The result of this is to raise the "effective" interest rate—the real rate the lender is earning on the amount he loaned—well above the rate stated in the loan contract. And if the borrower pays off his loan sooner than expected, the impact of paying points is even more pronounced.

The tables on the next page were prepared for *Changing Times* by Carleton Financial Computations, Inc., of South Bend, Ind. If you are comparison shopping for a mortgage loan, you can use them to help decide which of two lenders to do business with if both are charging points or if one is and the other is not.

Let's say, for example, Bank A agrees to a 20-year loan. For this, it will charge 6¼% interest—but no points.

Bank B offers a similar deal for only 6% interest. But it requires that you pay four points before it will approve the loan.

Which is the better deal?

Look at the table calculated on the basis of 6% interest rate payable over 20 years. You'll see that Bank B's "nominal" 6% interest rate goes up to an effective rate of 6.51%—slightly more than 6½%—if you pay four points. And if you sell the house in five years, the effective rate will have been even higher—7.02%.

All else being equal, in this case you'd obviously do better with Bank A, even though its nominal rate is higher than Bank B's. (The difference in rates has no effect on tax-deductible interest, by the way. You still deduct only the dollars you pay in interest each month—points are not deductible.)

The tables can also be used to satisfy curiosity. Let's assume, again, that you are the buyer and are being charged four points by Bank B. You learn from the person who is selling the house that the bank is also charging him points, let's say five. What is the bank's rate of return all told?

If you add your points to his points, the grand total is nine points, so that Bank B is really earning a yield of more than 7% (7.20%) on the deal.

Nominal interest rate	Number of points charged	20-year mortgages, effective rate (percent) if loan is repaid after—				25-year mortgages, effective rate (percent) if loan is repaid after—				
		5 years	10 years	15 years	20 years	5 years	10 years	15 years	20 years	25 years
5.75 percent	1	6.00	5.90	5.88	5.87	5.99	5.90	5.87	5.86	5.85
	2	6.25	6.06	6.01	6.00	6.24	6.05	5.99	5.97	5.96
	3	6.51	6.22	6.15	6.13	6.49	6.20	6.11	6.08	6.07
	4	6.76	6.38	6.28	6.26	6.74	6.35	6.23	6.19	6.18
	5	7.03	6.55	6.42	6.39	6.99	6.50	6.36	6.31	6.29
	6	7.29	6.71	6.56	6.52	7.25	6.66	6.49	6.42	6.40
	7	7.56	6.88	6.70	6.66	7.51	6.82	6.62	6.54	6.52
	8	7.83	7.05	6.84	6.80	7.78	6.98	6.75	6.66	6.64
	9	8.10	7.22	6.99	6.94	8.05	7.14	6.88	6.78	6.76
	10	8.38	7.40	7.14	7.08	8.32	7.31	7.01	6.91	6.88
6 percent	1	6.25	6.16	6.13	6.13	6.24	6.15	6.12	6.11	6.11
	2	6.50	6.31	6.26	6.25	6.49	6.30	6.24	6.22	6.21
	3	6.76	6.47	6.40	6.38	6.74	6.45	6.36	6.33	6.32
	4	7.02	6.64	6.54	6.51	6.99	6.60	6.49	6.45	6.44
	5	7.28	6.80	6.67	6.65	7.25	6.76	6.62	6.56	6.55
	6	7.55	6.97	6.82	6.78	7.51	6.92	6.74	6.68	6.66
	7	7.82	7.14	6.96	6.92	7.77	7.08	6.87	6.80	6.78
	8	8.09	7.31	7.10	7.06	8.04	7.24	7.01	6.92	6.90
	9	8.36	7.48	7.25	7.20	8.31	7.40	7.14	7.04	7.02
	10	8.64	7.66	7.40	7.34	8.58	7.57	7.28	7.17	7.14
6.25 percent	1	6.50	6.41	6.38	6.38	6.50	6.40	6.37	6.36	6.36
	2	6.76	6.57	6.52	6.50	6.74	6.55	6.49	6.47	6.47
	3	7.01	6.73	6.65	6.63	6.99	6.70	6.62	6.59	6.58
	4	7.27	6.89	6.79	6.77	7.25	6.86	6.74	6.70	6.69
	5	7.54	7.06	6.93	6.90	7.51	7.02	6.87	6.82	6.81
	6	7.80	7.23	7.07	7.04	7.77	7.17	7.00	6.94	6.92
	7	8.07	7.40	7.22	7.18	8.03	7.34	7.13	7.06	7.04
	8	8.35	7.57	7.36	7.32	8.30	7.50	7.27	7.18	7.16
	9	8.62	7.74	7.51	7.46	8.57	7.67	7.40	7.31	7.28
	10	8.90	7.92	7.67	7.61	8.84	7.83	7.54	7.44	7.41
6.5 percent	1	6.75	6.66	6.63	6.63	6.75	6.65	6.62	6.61	6.61
	2	7.01	6.82	6.77	6.76	7.00	6.80	6.75	6.72	6.72
	3	7.27	6.98	6.91	6.89	7.25	6.96	6.87	6.84	6.83
	4	7.53	7.15	7.05	7.02	7.50	7.11	7.00	6.96	6.95
	5	7.79	7.31	7.19	7.16	7.76	7.27	7.13	7.08	7.06
	6	8.06	7.48	7.33	7.30	8.02	7.43	7.26	7.20	7.18
	7	8.33	7.65	7.48	7.44	8.29	7.60	7.39	7.32	7.30
	8	8.60	7.83	7.63	7.58	8.56	7.76	7.53	7.44	7.42
	9	8.88	8.01	7.78	7.72	8.83	7.93	7.67	7.57	7.55
	10	9.16	8.19	7.93	7.87	9.10	8.10	7.81	7.70	7.67
6.75 percent	1	7.00	6.91	6.88	6.88	7.00	6.90	6.87	6.86	6.86
	2	7.26	7.07	7.02	7.01	7.25	7.06	7.00	6.98	6.97
	3	7.52	7.24	7.16	7.14	7.50	7.21	7.13	7.09	7.09
	4	7.78	7.40	7.30	7.28	7.76	7.37	7.25	7.21	7.20
	5	8.05	7.57	7.44	7.41	8.02	7.53	7.39	7.33	7.32
	6	8.32	7.74	7.59	7.55	8.28	7.69	7.52	7.45	7.44
	7	8.59	7.91	7.74	7.70	8.55	7.85	7.65	7.58	7.56
	8	8.86	8.09	7.89	7.84	8.81	8.02	7.79	7.71	7.68
	9	9.14	8.27	8.04	7.99	9.09	8.19	7.93	7.83	7.81
	10	9.43	8.45	8.19	8.13	9.36	8.36	8.07	7.96	7.94
7 percent	1	7.25	7.16	7.14	7.13	7.25	7.15	7.12	7.11	7.11
	2	7.51	7.32	7.27	7.26	7.50	7.31	7.25	7.23	7.23
	3	7.77	7.49	7.41	7.40	7.75	7.46	7.38	7.35	7.34
	4	8.04	7.66	7.56	7.53	8.01	7.62	7.51	7.47	7.46
	5	8.30	7.83	7.70	7.67	8.27	7.78	7.64	7.59	7.58
	6	8.57	8.00	7.85	7.81	8.54	7.95	7.78	7.71	7.70
	7	8.85	8.17	8.00	7.96	8.80	8.11	7.91	7.84	7.82
	8	9.12	8.35	8.15	8.10	9.07	8.28	8.05	7.97	7.95
	9	9.40	8.53	8.30	8.25	9.35	8.45	8.19	8.10	8.07
	10	9.69	8.71	8.46	8.40	9.63	8.62	8.33	8.23	8.20

[From House and Home, August 1964]

CONSUMER COUNCIL'S MORSE—POWER BEHIND THE PROBE

WASHINGTON.—The grab-bag of charges lumped under the "closing cost" tag has become one of housing's stickiest problems.

No one knows the precise impact of closing costs on housing sales. Best estimates show they cost new-house buyers upwards of $300 million annually. FHA provides one clue: it's latest tabulations (for 1962) show closing costs in some places, like Puerto Rico, are actually higher than average down payments on FHA-financed houses. And, the agency reports, nearly half of all FHA builders take advantage of FHA rules letting the buyer absorb closing costs in his mort-

gage. But this option is rarely available to builders using conventional financing.

A Senate subcommittee tried to probe closing costs in 1956, but shelved the inquiry because they are so complex (NEWS, Apr. '57).

Now the President's Consumer Advisory Council has recommended that his special assistant for consumer affairs. Mrs. Esther Peterson, ask all federal housing agencies to see what they can do to solve the problems—under present laws or by suggesting new legislation.

SAME ADVICE, VARIED CHARGES

The council resolution takes particular note of wide variations in closing costs for essentially the same services in federally financed home purchases.

FHA defines closing expenses as "incidental costs" including FHA examination fees, mortgagees' initial service charges, title search fees, deed and mortgage preparation fees, mortgage taxes and recording fees. Tax escrow and insurance premium deposits, also usually posted at closing, are not strictly closing costs, because they are prepayments on expenses the buyer must later meet.

Hearings on the Senate's ill-fated truth-in-lending bill documented the charges that worry the council. Items: attorney's fees ran from $13 in Indianapolis to $116 in Columbia, S.C.; title-search charges from $3 in Grand Rapids to $131 in Washington, D.C.; surveys cost from $14 in Indianapolis to $50 on Long Island. And total closing costs ranged from $98 in Burlington, Vt., to $657 in Grand Rapids.

FHA also told the Senate closing costs are rising faster than house prices. The 1953-to-1961 increase: from 1.7% to 2.0% of house value (or from $174 to $301 a house).

That money comes out of the buyer's pocket, after he has already stretched his finances to make the down payment. So, not surprisingly, more and more buyers are complaining more and more loudly.

Their cries have reached Dr. Richard L. D. Morse, who rallied the Advisory Council to action and drafted its resolution. Morse has headed the department of family economics at Kansas State University since 1955. His interest in closings quickened in 1960 when the Kansas attorney general bade him investigate a case of quadruple closing costs on a single building site. He found the land split into four quarters, each requiring a title search, appraisal fee and credit report.

COLLUSION?

"The Consumers Council is especially interested in cases where there is some feeling of collusion," Morse says. He names no names, but hints at fixed legal and title fees and search costs.

And, some critics argue, while many a builder protests that high closing costs are the work of title or mortgage companies and hence beyond his control, he often profits via an ownership in the same companies. Nor is he unwilling to cooperate with lawyers who insist on being present at closings, say the critics, even though they may do nothing more than collect a fee.

THE BUILDER'S SIDE

The other side is told by a Senate banking committee aide, John Lindley, who supplied data to support the truth-in-lending bill. He quotes a Virginia builder who paid a closing on buying his land and another to get a construction loan three months later. When he finally offered a house for sale, the buyer threw up his hands at the closing costs, result: the builder paid closing costs a third time in order to save his sale.

THE SHAPE OF REFORM

The Consumers Council wants a better explanation of what buyers pay different costs for the same service. Above all, it seeks some warning for the unwary buyer—this to protect him and the builder. Action may take these forms:

A call for investigations by the Justice Dept. and Federal Trade Commission to determine if legal, mortgage and title groups are fixing artificial fees for closing services.

A requirement that closing costs, like appraisal costs (NEWS, May '63), be disclosed to FHA buyers several days before the closing. FHA has already been asked to consider adding a footnote showing closing costs to its estimate of value.

[From the Kansas Consumer Credit Journal, summer 1967]

THIRTY-SIX PERCENT TOO MUCH? TOO LITTLE?[1]

Often I am asked: "Isn't 36% TOO MUCH TO PAY ON A LOAN?" My standard answer is that if you can get the same service at a lower rate elsewhere, yes it is. But if you cannot, then 36% in a bargain.

I am also asked: "Isn't 36% too much to charge? It's an outrageous rate!" My standard reply is that there are some people whose credit habits are so poor that even a 100% rate would not be adequate. There are many consumers who cannot be serviced profitably at a 36% rate. There are others who can. The problem for the creditors is to know the difference.

Consumers want low-cost, low-rate, good-service loans. Lenders want reliable, steady, low-cost borrowers. A free market allows both consumers and lenders to choose each other.

It is an ill-informed or irresponsible consumer who pays 36% when he could have obtained the same service for 18%. And it is an ill-informed or irresponsible lender who lends at 36% to a class of customers with loan repayment habits that cost 72% to service. Better communication can reduce the number of consumers, and lenders who are ill-informed. Improvement will come through better credit-reporting services and full disclosure of credit costs and rates. Progress is being made on both fronts.

But isn't 36% usurious? The answer to this is that most states have enacted Consumer Loan Acts which are exemptions to the usury statutes, so that in most situations, 36% is not a usurious rate. There is need for a good hard look at our usury laws. If they are intended to protect the consumer, they are about as useful as a mixture of cracked bats is to the baseball player. The rate is unrealistically low. And non-money lenders, such as retailers, escape coverage. So consumers who think of credit as a way of getting today's needs with tomorrow's money are totally unprepared for the uneven coverage of present laws.

Those who see injustice in high rates need also to look from the other side of the counter. The focus is too often on the high rate lender. But what is most in need of study are the characteristics of consumers who use this higher cost credit service. Unfortunately, not enough study has been given to these people, and not enough money management education is devoted to their needs.

This is a short answer to a simple question of how much is too much? It depends on one's perspective. What is too much for one is not enough for another.

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[1] Written by Dr. Richard Morse, Professor and Head of the Family Economics Department of Kansas State University at Manhattan, Kansas.

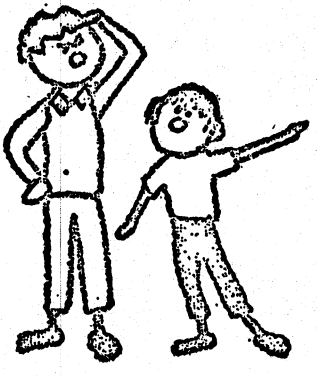
Truth in Lending

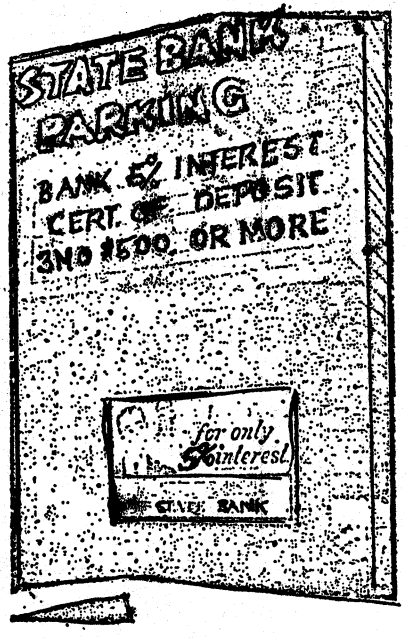
by

Richard L. D. Morse

Would you believe this bank borrows and lends at 5%

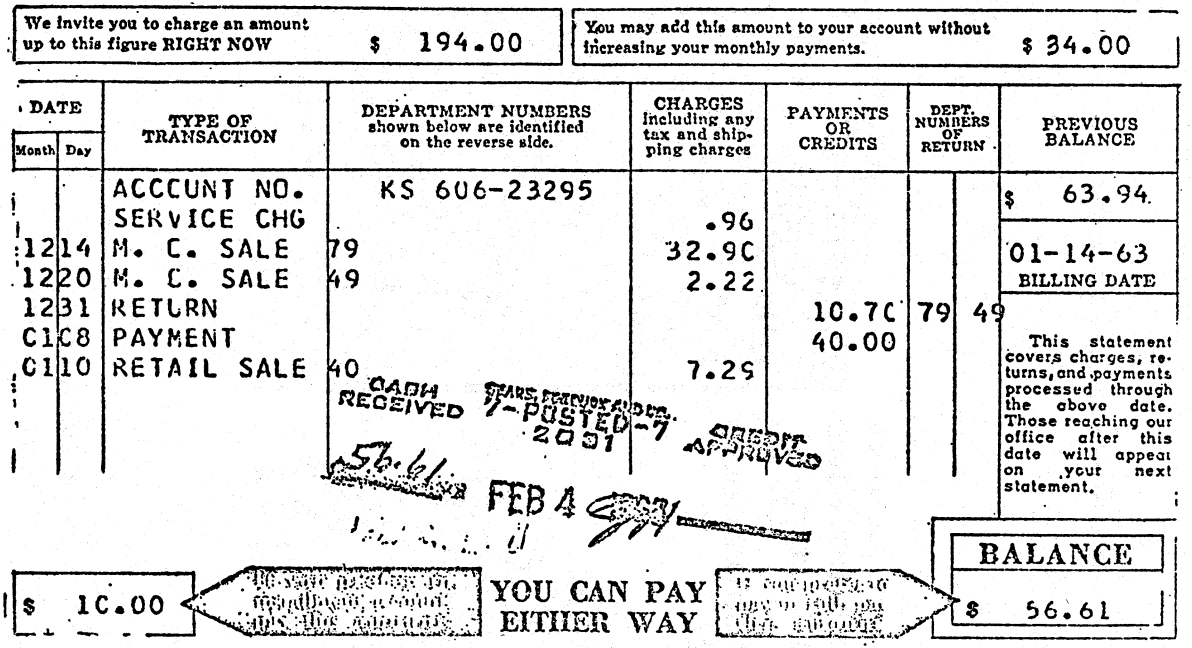
. . . and still makes a profit?





COUNCIL ON CONSUMER INFORMATION

Pamphlet Number 17



We invite you to charge an amount up to this figure RIGHT NOW $ 194.00

You may add this amount to your account without increasing your monthly payments. $ 34.00

DATE Month	DATE Day	TYPE OF TRANSACTION	DEPARTMENT NUMBERS shown below are identified on the reverse side.	CHARGES including any tax and shipping charges	PAYMENTS OR CREDITS	DEPT. NUMBERS OF RETURN		PREVIOUS BALANCE
		ACCOUNT NO.	KS 606-23295					$ 63.94
		SERVICE CHG		.96				
12	14	M. C. SALE	79	32.90				01-14-63 BILLING DATE
12	20	M. C. SALE	49	2.22				
12	31	RETURN			10.70	79	49	
C1	8	PAYMENT			40.00			This statement covers charges, returns, and payments processed through the above date. Those reaching our office after this date will appear on your next statement.
C1	10	RETAIL SALE	40	7.29				

CASH RECEIVED

YEARS REVOLVING ACCT. 7 - POSTED - 7 2031

CREDIT APPROVED

FEB 4

$ 10.00

YOU CAN PAY EITHER WAY

BALANCE $ 56.61

This statement tells the consumer "everything" except the service charge rate and the balance to which it is applied. This could be supplied by printing on the face of the form:

"Monthly service charge is 1 1/2% (18% per year) of the previous balance."

The earned interest can immediately be used to earn interest. The following table gives the values of a sum variously compounded at a nominal annual rate of 6%.

Earnings on $100 at 6 percent

Compounded:	*End of first year*
Annually	$6.00
Semi-annually	6.09
Quarterly	6.1364
Monthly	6.1678
Weekly	6.1800
Daily	6.1831
Continuously	6.1837

These earnings are referred to as the *effective* annual rates in contrast with the *nominal annual rates.* To show the maximum difference, the following table was prepared:

Nominal annual rate							
0	2.00	6.00	12.00	24.00	30.00	36.00	42.00
Effective annual rate, continuous compounding							
0	2.02	6.18	12.75	27.12	34.49	43.33	52.20

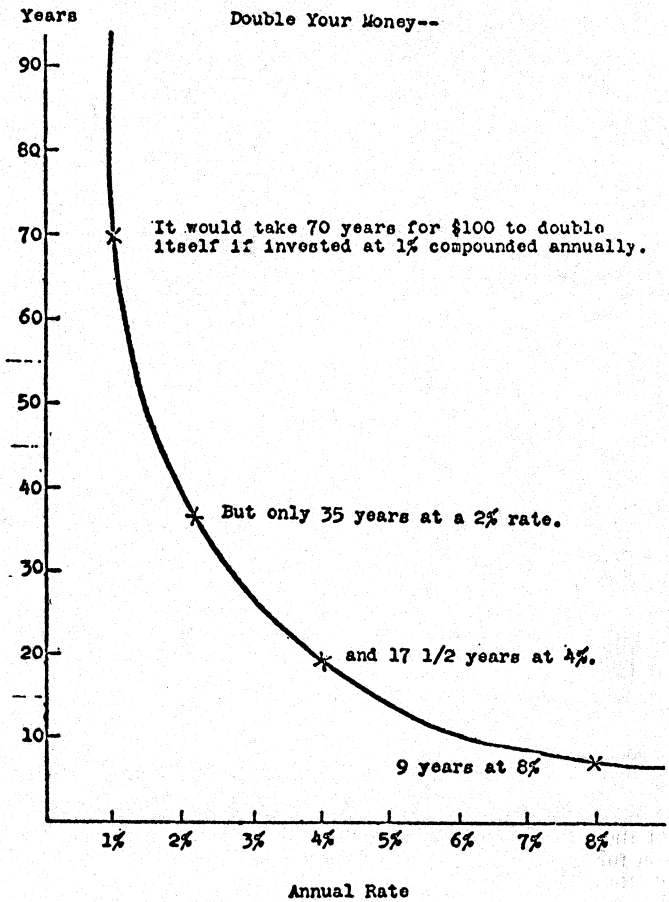
Morse: Consumer Credit Computations, pamphlet No. 18, p. 30.

Double your money. A dramatic way of seeing compound interest at work is to ask: "In how many years will a sum be double in value?" This is shown in Figure 1. The answer depends on the rate. As the rate is doubled the number of years is halved. For example, money invested at 6% will double in 12 years, but at 3%, 24 years is required. *A rule of thumb is to divide the rate into 72 for the number of years required to double your money.*

The compounding effect is even more dramatic if one recognizes that a sum which could be doubled at the end of 24 years (at 3%) would grow an equal amount in the next 12 years, again in 6 years, again in 3 years, and again in 1½ years. Then, a growth which originally took 24 years would, at this sixth stage, take only ¾ths of a year.

It is this same geometric progression which is responsible for the population explosion. "It took all the vast reaches of time to build today's population of slightly over 3 billion. It will take only 40 more years for the population to reach 6 billion, if the present growth rates remain unchanged." If the growth rate is 1.7% a year, the expected doubling of the population in 40 years can be read from Figure 1. In addition to the compounding effect there is also likely a rate change as a result of medical advances. The resulting expansion is beyond the imagination of most people.

Morse: *Consumer Credit Computations,* Pamphlet #18, pp. 30–32.

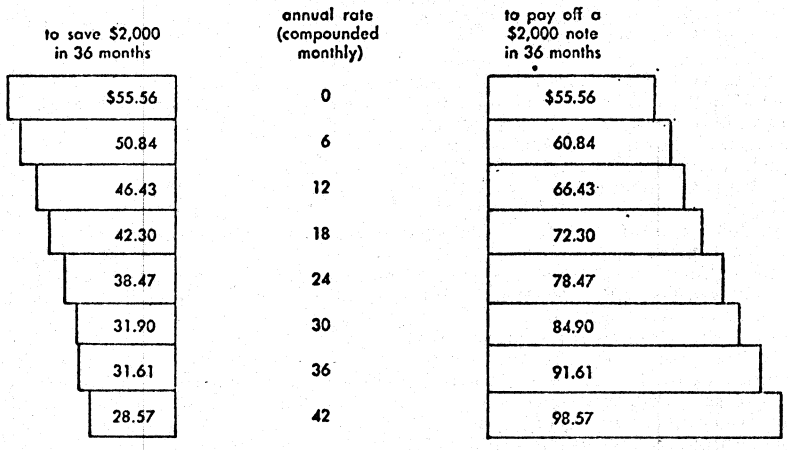


Number of years required for a principal sum to double by accumulating interest at specified rates, compounded annually.

Figure 1

For example, suppose that approximately $2,000 is needed to complete a car purchase. The left side of the diagram below shows the amounts that must be saved monthly for 36 months to accumulate the required $2,000 to pay cash. On the right side is shown the amounts that must be paid every month for 36 months to discharge a $2,000 note, at stipulated annual nominal interest rates, compounded monthly.

MONTHLY PAYMENTS REQUIRED



The rate can be a "tailwind" or a "headwind" in effect—requiring less money "fuel" than the $55.56 to accumulate $2,000 at higher rates, or more money "fuel" to offset the resistance of higher rates.

When the rate is zero the same amount ($55.56) is required. But at a rate of 24%, less than one-half as much need be saved monthly to accumulate $2,000 as need be paid to satisfy a $2,000 note in an equal amount of time. (It is interesting to note that the difference in amounts of payments into savings or on the note is $10 times the multiples of the 6% rate. At 18% the difference is $30; and at 42% the difference is $70.)

GLOSSARY OF TERMS SUBMITTED BY PROF. RICHARD C. D. MORSE

Accommodation Co-maker: A person signing a note, evidencing a loan transaction, for the accommodation and benefit of a borrower, without sharing in the proceeds of the loan and without compensation, although primarily liable with the borrower for repayment.

Accounts Receivable: Accounts which are due to be paid either now or at some future time by debtors. Accounts outstanding.

Actuarial Method: (1) A method for computing a true rate of finance charge. For a unit time period the basic formula is the finance charge divided by the principal sum unpaid. This ratio is the same for each unit time period and for the total term from the contract date to maturity.

(2) Meets the conditions of the United States Rule.

"Add-on and Discount" Rates: Unless otherwise specified rates are for the contract period without regard to instalment payments and expressed as dollars per hundred or as percentages. Add-on is computed on and added to the original amount lent. Discount is computed on and deducted from the face amount of the note.

Amortization: A term used to signify the exact repayment of a part or all of the principal of a loan before maturity and interest charged during the period by periodic payments over the term of the loan.

Amortization Schedule: A table giving the periodical payments scheduled to reduce a debt to zero, showing for each payment the amount applied to principal, the amount applied to interest, and the balance of the principal due.

Annual Percentage Rate: The nominal annual rate determined by the actuarial method.

Annuity: A series of payments payable in the future usually of equal amount and including interest.

Balance: The principal amount outstanding on any account at a given time. That which is outstanding at time of contract date is the beginning balance; otherwise it means the unpaid balance.

Balloon Note: (1) An instalment note in which the final payment is a larger amount than the preceding series of equal periodic payments.

(2) A note providing for a final payment greater than one and one half the amount of the regular payments.

Balloon Payment: The balance of principal still due at maturity.

Beginning Unpaid Balance: The amount to be financed.

Blended Payment: An amount paid in discharge of a debt, including portions applicable to both principal and interest.

Carrying Charge: See finance charge.

Cash Advance: The face of the note minus the discount.

Cash Price: The price at which a vendor is prepared to sell goods or services for cash.

Chattel: A property which is moveable, such as furniture, cars, livestock or farm machinery.

Chattel Mortgage: Legal instrument under which a piece of personal property stands as security for a debt but continues in the possession of the debtor so long as there is no default.

Closed End Credit: See contract credit.

Cognovit Note: Written authority of debtor and his direction for entry of judgment against him. Defendant has confessed judgment and justice of claim.

Collateral: Property or possessions placed on deposit as security for the performance of an obligation or payment of a commitment.

Collectibility: The quality of a debt or obligation whereby a person may be made to pay the debt or fulfill the obligation by means of legal process.

Co-maker: Co-signer on a note.

Compound Interest: An amount of interest charged on an amount of interest previously charged and unpaid.

Conditional Sales: Sales made under a payment contract where title remains with seller until all payments are made.

Conditional Sales Contract: Legal instrument used in credit sales of personal property which provides that title remain in the seller until the purchase price is paid but that possession may be enjoyed by the buyer so long as there is no default.

Confession of Judgment: The act of a debtor in permitting judgment to be entered against him by his creditor, for a stipulated sum, by a written statement to that effect or by warrant of attorney, without the institution of legal proceedings of any kind; voluntary submission to courts jurisdiction.

Constant Ratio Method: A method for computing an approximate interest rate. It assumes that both principal and interest are proportional to the number of periodic payments.

Consumer: An individual who acquires a service or property for his personal use.

Consumer Credit Sale: See H.R. 11601, section 202(c).

Cooling Off Period: A period of time between the signing of a contract and the time contract becomes binding.

Contract Credit: A form of credit contract which requires the amount of credit and the amount and time of repayments to be stipulated, or, in lieu of one term the annual percentage rate may be stipulated. This closed end contract contrasts with open end or revolving credit.

Cost of Borrowing: All charges payable by a debtor incident to the extension of a credit purchase or cash loan.

Credit: (1) Acquisition of purchasing power by a debtor, represented by an advance in cash, kind or deferred payment by a creditor.

(2) H.R. 11601, section 202(b).

Creditor: (1) A person to whom a debt is owing by another person who is the debtor.

(2) H.R. 11601, section 202(e).

Credit Charge: See finance charge.

Debtor: One who owes a debt; an obligor.

Deferment: Difference in time lapse between time of first payment and one unit period of contract. For contracts with monthly payments it is the time to first payment less one month.

Deficiency Judgment: That part of a debt secured by mortgage not realized from sale of mortgaged property. In ordinary parlance, it refers to the amount still due after the return of the special execution.

Disclosure: Statement by the creditor to the consumer of all terms relevant to a contract.

Dollar Add-on: The add-on rate expressed in terms of dollars per hundred dollars of the original amount of the principal per year, unless another time unit is specified.

Dollar Add-on per Contract: (1) The dollar add-on for the period beginning at contract date to maturity.

(2) For contracts with regular monthly pay periods FC/$100/contract equals FC/$100/years divided by 12 and multiplied by number of months in contract.

Dollar Add-on per Year: (1) A dollar add-on rate which makes explicit the time period otherwise assumed.

(2) For contracts with regular pay periods FC/$100/year equals the FC/$100/contract divided by the number of pay periods in a year and multiplied by the number of pay periods in the contract.

Dollars per Hundred per Year of the Average Unpaid Balance: Same as "Annual Percentage Rate" but expressed in dollar rather than percentage terms.

Due Date: A date upon which a payment is required under a loan contract.

Effective Interest Rate: Rate actually earned or paid, taking into account compounding during the year; the yield in contrast to nominal rate.

Equity: The value of the borrower's unencumbered investment in property.

Equivalent Annual Percentage Rate: The analyzed expression of the periodic rate, obtained by multiplying the periodic rate by the number of periods in a year.

Evidence: Document or record, as "evidenced by a note" or contractual agreement.

Face Amount of a Note: (1) The sum of money specified to be due or payable; if note bears interest, "face amount" includes interest accumulated at maturity.

(2) The cash advance plus finance charge.

Finance Charge: (1) All charges incident to the extension of credit.

(2) All charges related to the credit transaction, but not including charges for those goods and service the person as a cash customer of the credit vender, or nonborrower from the credit lender has the option of not procuring.

(3) H.R. 11601, section 202(d).

First Payment: The date specified in the contract for making the first payment. On monthly contract, the first payment is assumed to be one month from contract date.

Floor Planning: Plan of financing a dealer's stock of goods (particularly automobiles or electrical appliances).

Forbear: To avoid voluntarily.

Forbearance: A creditor's giving of indulgence after the day originally set for payment; an abstaining from the enforcement of a right.

Free Ride: The period of time during which as a result of options exercised by the obliger and extended by the creditor relieved the credit for that period from the imposition of a finance charge.

Garnishee: One garnished.

Garnishment: A proceeding whereby property, money or credits of a debtor in possession of another, the garnishee, are applied to the payment of the debts by means of process against the debtor and garnishee. It is a statutory proceeding and can only be resorted to where authorized. (4 Am. Jur. 553, 554; 38 C.J.S. 1)

Graduated Rate: See Step-rates.

Holder: The person who has legally acquired possession of a promissory note, by endorsement or delivery and who is entitled to receive payment of the instrument.

Holder in Due Course: A holder who has taken a note under the following conditions:

(a) Became holder of it before it was overdue, and without notice that it had been previously dishonored if such was the fact.

(b) That he took the note in good faith and for value, and that at the time it was negotiated to him he had no notice of defect in the title of the person who negotiated it.

Hypothecate: To give (personal property) in pledge as security for a debt.

Installment Credit: A form of contract credit with repayments made in installments.

Interest: The amount charged for the use of money or credit, calculated periodically on the principal outstanding.

Instrument: A legal instrument or document, a note, contract, agreement which is in writing.

Kick-Back: Payment of part of finance charge to seller.

Legal Fees: Costs of legal service and documentation necessary to protect the lender (and presumably the borrower) in establishing the validity and security of the loan.

Matured: Fully paid up, fully carried out as to terms agreed upon.

Maturity: The date upon which the balance, if any, of the principal is payable in full.

Merchandise "Add-On": Additional credit grant which is added to a debt the purchaser already owes for previously purchases.

Mortgage: A loan secured by lien upon property.

Mortgage Repayment Plan: Unamortized—wherein no repayments of the principal are required until maturity or payments are flexible as to date and amount.

Amortized—wherein repayments of principal are made periodically over the term of the loan.

Negotiable Paper: Includes a bill of exchange, promissory note or other negotiable instrument and is transferable so as to give the transferee all the rights originally created by it, without affecting him with any equities between the original makers of the instrument.

Net Amount: The net cash actually received by the borrower after the deduction of any points or charges.

Nominal Interest Rate: Quoted annual rate which does not take into account compounding during the year.

Open End Credit: See revolving account credit.

Other Fees: Costs of discharges of previous debts, registration of loan, etc.

Periodic Rate: Expresses in percentage terms the ratio of the financial charge to the amount of credit owing for that period.

Points: (1) The number of percentage points the principal amount of the note is discounted.

(2) A sum paid by the borrower in addition to interest as a cost of obtaining the net amount. The bonus may be paid as a separate money transaction or may be included in the principal. It is expressed in percentage points.

Power of Attorney: An instrument authorizing another to act as one's agent or attorney.

Pre computation: A procedure whereby the finance charges that were obtained with the monthly rate applied to the schedule monthly balances is added to the amount to be financed and is in present rated equally so as to be paid in equal instalments.

Present Value: The value of a sum payable in the future, including a calculated accumulation of interest.

Principal: The sum stated to be repayable by the borrower exclusive of interest or the balance of such sum still unpaid at any given time.

Proceeds of a Note: Amount received by borrower.

Repossession: The exercise of the right of a creditor to re-acquire chattels given as security by a debtor or to take possession of property sold under conditional sales contract.

Revolving Account Credit: A form of contract credit which does not specifically except to limit the amount of credit that may be extended: the time or amount of payments. However, the rate of charge is usually specified. This open end credit contract contrasts with closed end credit contract.

Sales Finance Company: Company which buys at discount promissory notes received by retail sellers in payment of merchandise sold and which may or may not engage in direct lending or in floor planning.

Schedule of Payments: An itemization of each time and amount of payment needed to retire the debt. See also amortization schedule.

Secured: Guaranteed as to payment by the pledge of something of value.

Service Charge: See finance charge.

Stated Charge: The published, advertised, mentioned or agreed rate to be charged by notice published, advertised or mentioned.

Step-Rates: Different rates on loans of different size; graduated rates.

Term: The number of periods during which the loan contract continues.

Term: A period of time; in finance, the time from the beginning of a debt to its final payment.

Terms: Essential statements on which the validity of a contract depends.

Time Price: The total amount payable by a debtor under a deferred payment contract in purchase of goods or services.

Time Price Differential: Difference between time payment price and cash price when goods are sold on credit.

Total Amount to be Financed: The total credit extended, excluding the finance charge (S. 5).

True Rate: The rate as computed by the actuarial method.

United States Rule: A ruling by the United States Supreme Court that in partial payments, interests computed on the unpaid balance for the elapsed time at the stated rate, is first deducted and any remainder applied to reduce the principal. Unpaid interest cannot be added to the principal or compounded.

Unpaid Balance: The principal.

Wage Assignment: A transfer of the right to receive wages by the debtor to the creditor: from the assignor to the assignee.

Waive: A release from some performance or duty that could be legally or morally enforced.

Yield: The amount of interest or finance charge a credit instrument generates as it is paid out.

KANSAS STATE UNIVERSITY,
DEPARTMENT OF FAMILY ECONOMICS,
Manhattan, Kans., August 16, 1967.

MRS. LEONOR K. SULLIVAN,
Chairman, Consumer Affairs Subcommittee, Committee on Banking and Currency, House of Representatives, Washington, D.C.

DEAR MRS. SULLIVAN: I am pleased to answer Mr. Annunzio's request for certain information concerning Miss Leonard's study of the impact of the DoD Directive on creditors. The first seven pages of the full study summarize findings and give recommendations and observations. These are attached. Copies of the full study are available from this department.

Mr. Annunzio asked specifically about the "loophole" in the Directive that permits creditors to circumvent the intent of the Directive which is to require full disclosure to the serviceman before he is obligated. Actually, the "loophole" allows the disclosure to be made after the credit is granted, so that the filing of the Certificate of Compliance becomes an approved method for burdening the DoD with the collection of debts. This "loophole" can be corrected with the amendment suggested.

Two other observations are noted which would require DoD attention:

(1) Creditors generally fail to include insurance premiums in the total finance charges; although, the Directive is explicit in this regard.

(2) Retailers have not been advised by the DoD as to the full meaning of that portion of the Section X, E which exempts revolving or open end credit ". . . if the account shows the periodic rate and its annual rate equivalent and the balance to which it is applied to compute the charge."

The Directive is an excellent document. If properly executed, it can make a significant contribution to the welfare of servicemen and greatly reduce involvement of the armed services in consumer credit abuses.

Respectfully submitted.

RICHARD L. D. MORSE, *Professor and Head.*

EFFECT OF DEPARTMENT OF DEFENSE DIRECTIVE NO. 1344.7 ON CREDITORS BORDERING FORT RILEY

(By Louise Leonard, Assistant Instructor)

RECOMMENDATION

It is recommended that the "loophole" provided by Section X, B, 2 be closed for it enables credit grantors to obtain the assistance of the military in the collection of debts from servicemen who were not given the full facts about the credit at the time the debt was contracted. Only credit contracted prior to July 1966 or the serviceman's induction into the military should be eligible for assistance of the Department of Defense (DoD) in debt collection without the credit grantor, supplying evidence of having fully met the borrower's right to be informed at the time the credit was contracted.

The Directive was written with the expectation that all who sell or loan to military personnel would subscribe with the Standards of Fairness and make Full Disclosure (Section IX, B). The Full Disclosure Form was designed to

give servicemen information needed to make prudent use of credit—to know the terms of the credit contract and the cost both in dollar amount and annual rate. Such information enables servicemen to become self-educated, discourages deceptive practices of unscrupulous creditors, and alerts conscientious borrowers to avoid unwarranted extensions of credit. If the DoD contract and Certificate of Compliance are negotiated, only after the credit is granted and the borrower is obligated, then the advantages of full disclosure are lost and the Certificate of Compliance becomes merely a legalized mechanism for burdening the DoD with the collection of bad debts.

Specifically it is recommended that the privilege under Section X, B, 2 of completing the second Certificate of Compliance, which begins: "If Attachment A is *not* executed before the obligation was incurred . . .", should be limited to those situations in which servicemen were not in the military at the time the contract was signed, or the contract was dated prior to the effective date of the DoD Directive, July 1, 1966.

SUMMARY

The revised Department of Defense Directive Number 1344.7, which pertains to the issuance of credit to servicemen, was issued May 2, 1966, and it became effective July 1, 1966. The Directive prescribes conditions and procedures for creditors who deal with military personnel which must be observed if the help of the DoD is to be requested in collecting defaulting obligations. Those who do not elect to do business with servicemen are under no obligation to observe and follow the conditions and procedures as outlined in this Directive. Since the Directive has the potential of establishing a new standard for many creditors, it seemed appropriate that a study of local creditors bordering an army base be made to see if and how they were affected by the Directive.

Fort Riley was the army base selected. It lies eight miles southwest of Manhattan, Kansas, and extends to the city limits of Junction City, Kansas. It comprises 1,000,000 acres, and with a full division training, it becomes one of the larger cities in Kansas with a population of near 24,000.

Creditors Interviewed

All creditors presumed doing business with military personnel in Manhattan and Junction City were contacted. These creditors were classified according to the type of business in which they were engaged. The creditors consisted of banks, finance companies, new and used car dealers, furniture and appliance dealers, department stores, and mobile home dealers. The pawnshop brokers were interviewed in Manhattan, but not in Junction City. In Manhattan a total of 43 creditors were approached and 39 (90%) responded. In Junction City a total of 47 creditors were approached and 42 (89%) responded.

The creditors in Manhattan were interviewed during working hours between September 20 and October 24, 1966, and continued in Junction City between December 13, 1966 and January 19, 1967.

Approximately half of the creditors had heard Colonel John Jay Douglass, Staff Judge Advocate at Fort Riley, Kansas, explain the Directive either in Junction City August 17 or in Manhattan August 24, 1966. He used the same format and notes at both meetings. Copies of the Directive were made available to the creditors through the cooperation of the respective Chambers of Commerce.

Understanding of Directive

Forty percent of the Manhattan creditors had their first contact with the Directive through this interview. A larger proportion of the Junction City creditors (90%) had seen and were familiar with it. All creditors who were familiar with the Directive expressed some degree of understanding: "Completely" (44%), "generally" (17%), and "somewhat" (17%).

Proportion of Credit Business with Servicemen

The creditors in Junction City, with the exception of the banks, do a larger proportion of their business with servicemen than do the creditors in Manhattan. The banks in both cities proportionately do about the same.

Types of Credit Extended

Seven types of credit were cited by the creditors extending credit in Junction City, and ten types were cited by the Manhattan creditors. In both cities, of all the credit extended approximately two-thirds was installment credit, which included automobile papers, consumer goods loans, repair and modernizing loans,

and personal loans. The non-installment credit included single-payment credit, revolving charge accounts, and 30, 60, and 90-day charge accounts.

Effects of Standards of Fairness on Creditors

All creditors were asked to respond on a three-point scale of "no effect," "some effect," or "major effect" how each standard would effect their way of doing business with servicemen. Standards One, Two and Three had very little effect, if any, on creditors in both Manhattan and Junction City. Standard Four had some effect on one-quarter of the creditors in Manhattan and on one-fifth of the creditors in Junction City. The most frequently mentioned objection to the standard was that servicemen could move security beyond state and national boundaries. Nearly all creditors found Standards Five, Six, and Seven to have "no effect" on their business dealings with servicemen.

The Junction City creditors (95%) found Standard Eight to be of "no effect," but one-quarter of the Manhattan creditors, primarily the car dealers, indicated "some effect." Over 80% of the creditors in Manhattan and Junction City reported Standard Nine to have "no effect" on them. The Junction City creditors (93%) also found Standard Ten to have "no effect" on them. However, almost half (45%) of the car dealers in Manhattan reported it would affect their business with servicemen since they required a non-refundable deposit for new cars which must be ordered.

Effect of Full Disclosure Contract on Creditors

Each creditor was asked how difficult it would be to complete each section of the contract disclosure form. All said it would not be difficult to secure the necessary information for all parts, except No. 6 and No. 9, because they supply this information on their own contracts in compliance with Kansas Law. The creditors said it would be difficult to supply the information called for in the sixth part because their present contracts do not include the filing fee, investigating fee, or insurance as part of the finance charge. This information is shown separately on their contracts and is added into the total amount due, but not as part of the finance charge. Also, they said it would be difficult or somewhat difficult to supply the information called for in the ninth part because they were unaccusomed to expressing the finance charge in terms of an approximate annual percentage rate.

Other Effects of Department of Defense Directive

Non-Equal Payments

Fifty-eight percent of the creditors in Manhattan and 75% in Junction City said all their contracts were written to be paid in equal monthly payments. The volume of credit extended for repayment in other than level monthly payments in both cities was less than five percent.

Department of Defense Rate Table

More than half of the creditors in Manhattan and Junction City reported the DoD Rate Table was not difficult to understand and use. In Manhattan, slightly more than one-quarter of the creditors (26%) said they are or would use this rate table to disclose the annual percentage rate. In Junction City, 50% said they would prefer to use the DoD Rate Table.

Use of the Directive

In Manhattan, twenty-nine (76%) of the creditors were not using the Directive, and in Junction City, 24 (60%) were not using the Directive when extending credit to servicemen. Some creditors in Junction City reported they were using the Directive in part. That is, some fill out the Certificate of Compliance only if they need assistance with collection of debts. Others fill out the contract disclosure forms only for 25% of the contracts written with servicemen because it "confuses them, takes too much time, and adds more paper work." Another creditor said he asks the servicemen if they would like it worked out; if not, he does not fill it out.

Additional Problems

Seventy-four percent of the creditors in Manhattan and 70% of the creditors in Junction City stated they could see no problems other than the ones discussed previously. Additional problems mentioned were: (1) The Directive calls for much more paper work thus increasing time necessary to fill out forms and increasing expenses incurred; (2) Extension of credit will be tightened; (3)

A lot of sales will be lost if they begin quoting the annual percentage rate because people will think it is the rate of interest being charged; and (4) Paper will no longer be purchased from door-to-door salesmen.

Creditors Affected

The creditors were asked to indicate those for whom they believed the Directive might present serious problems. Thirty-three percent of the Manhattan creditors and 46% of the Junction City creditors did not think the Directive would give any creditiors serious problems. The remainder named one or two creditors they believed might have problems with the Directive. None of the creditors listed were mentioned by more than five percent of the creditors in Manhattan nor by more than ten percent of the creditors in Junction City. The ones listed were finance companies, banks, jewelry dealers, fly-by-night salesmen, door-to-door salesmen, independent creditors, car dealers, retail creditors, mail order houses, loan sharks, and pawnshop brokers.

Effect on Servicemen Obtaining Credit

Nearly 50% of the creditors in Manhattan and Junction City said the Directive would have "no effect" on servicemen and their ability to obtain credit. One creditor said it will make it more difficult because they will be more selective in the contracts they buy. Another creditor said that the Directive adds more work, thus making it less attractive to deal with servicemen.

OBSERVATIONS

Most creditors considered the Department of Defense Directive to be neither unduly burdensome nor too difficult to understand. Some may have considered it not burdensome because they had found a convenient "loophole," and some "understood" who did not fully comprehend the Directive.

Approximately one-quarter of the creditors had adopted the DoD forms, and believed they were executing the Directive properly. They did not consider the Directive a burden.

Another one-tenth of the creditors had found a tolerable escape which allowed them to adapt the Directive to their own needs. They filled out forms only if the serviceman's credit worthiness was questioned. Or, they filled out a Certificate of Compliance after the contract was negotiated with the serviceman and needed assistance of the DoD with collection of the debt.

Another larger group who refinanced the credit they extended did not comply unless required to do so by their financing source. Few had been so directed, and so these creditors found the Directive to be of little effect. Evidently Standard of Fairness No. 3 is not considered to affect the holder of purchased credit paper.

Some creditors who said they understood the Directive, in fact, did not. When questioned about the finance charges being expressed as an annual percentage rate, they showed as evidence of their compliance their rate schedules, which were dollar add-on and not actuarial rate based. Others said their contracts provided for the finance charge to be expressed in dollars per hundred as required by Kansas statutes. Nevertheless, most creditors said the DoD Rate Table was not difficult to use and understand; it did not pose a threat to them or appear to be something they could not use.

Another major misunderstanding was the failure of creditors to include insurance premiums in the total finance charges. Instead, they included them as one of the charges to be financed. Although the Full Disclosure form is quite explicit in this regard, the practice of not including insurance as a finance charge will probably continue to be ignored until enforced by the DoD because (1) it would raise the disclosed rate so much in some cases as to give the appearance of exceeding the legal rate, and (2) servicemen might be discouraged from adding this insurance coverage, thereby reducing a profitable line of service being extended by the credit grantors.

Retailors seemed not to understand clearly their possible exemption from the requirements of Full Disclosure and Standards of Fairness for claims based on a revolving or open-end credit account. Such claims are exempt "* * * if the account shows the periodic rate and its annual equivalent and the balance to which it is applied to compute the charge;" (Section X, E). Since the Directive assumes monthly periodic payments, the annual equivalent is twelve times the monthly rate.

Except for the efforts of Colonel Douglass, there was no other significant educational effort observed. Merchants did not indicate that military personnel were demanding Certificates of Compliance of Full Disclosure statements, and, managers of local chain outlets were generally without guidelines from national and regional headquarters. The seriousness of the DoD Directive was not in full evidence.

(Mr. Vern Countryman, professor of law, Harvard Law School, submitted the following article on wage garnishment by George Brunn in the California Law Review:)

Wage Garnishment in California: A Study and Recommendations†

*George Brunn**

HOLLYWOOD HAS BROUGHT us a familiar picture of the Western sheriff, with his ten-gallon hat, star on shirt, riding after the black-hatted criminal or outdrawing him in the middle of the town's dusty main street. Today's deputy sheriff in California is likely to wear a business suit and to carry a briefcase instead of a gun. Rather than pursuing criminals, he may spend his career doing nothing more glamorous than serving papers in civil lawsuits—summonses, subpoenas, writs, and orders. As law and order followed the flag, papers followed the law.

Lots of papers. The San Francisco Sheriff's Office has a civil department with eleven field deputies and sixteen persons in the office just for serving papers. In the first two months of 1965 the deputies made more than 5,900 services, among them over 3,700 levies under writs of attachment and execution. Most of these levies—seventy-five to eighty per cent—were wage garnishments.[1] The sheriff's business is booming; he makes more levies than ever and collects over a million dollars a year for creditors.[2] Society subsidizes the sheriff's collection work; the cost of operating the civil department runs more than double the amount of fees the department receives.[3]

To the deputy, wage levies are mainly a job; to the creditor, a useful collection device; to the employer who must process them, a nuisance and an expense; to the debtor, a humiliating experience that may bring

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† Based on a study made for the Center for the Study of Law and Society, University of California, Berkeley.

* A.B., 1947, Stanford University; LL.B., 1950, Stanford University; Member, California Bar.

[1] Data obtained from Carl Olson, Chief Deputy, Civil Department, Office of the Sheriff, City and County of San Francisco [hereinafter cited *Olson data*]. Writs of attachment and execution, including garnishments, must be levied by a sheriff, constable, or marshall. CAL. CODE CIV. PROC. §§ 540, 542, 682. The ratio of wage levies to levies on other property is Olson's estimate. A separate survey corroborates the ratio. See Appendix B, *infra* (taking the number of levies where the type of property levied against was known, 47 out of 68 levies, or almost 70%, were wage garnishments; in executions the ratio is substantially higher).

[2] Trust fund disbursements by the San Francisco Sheriff's Office rose from $547,000 in fiscal 1953-54 to $1,144,000 in fiscal 1963-64. Personal property attachments and executions totaled 1356 in February 1953 and 1781 in February 1965. Executions rose sharply while attachments declined. Of the February 1953 levies, 784 were attachments and 572 executions; in February 1965 there were 696 attachments and 1085 executions. *Olson data.* Compare Appendix B *infra.*

[3] Note 48 *infra.* With respect to fees, see text accompanying note 46 *infra.*

serious hardship in its wake. Society has a major stake in the garnishment process, which is not only a creature of law but an activity of government. Society has a legitimate concern that legal debts be paid; society also has a legitimate concern that the collection tools it fashions and whose use it sanctions do not cause undue distress and hardship. How well garnishment serves these various competing interests is the question underlying this study.

The study first considers the operation of wage garnishment in California. Next it reviews the equivalent laws of other states, especially with respect to the amount of earnings exempt from garnishment. Then it discusses major factors pertinent to a garnishment policy, among them the relation of garnishment to employment, bankruptcy, and consumer credit. The final section includes several recommendations.

I

GARNISHMENT STATUTES

A. California

The words "attachment," "execution," and "garnishment" have a formidable ring. Their meaning is simple enough. Both attachment and execution refer to the seizure of a defendant's property by legal process; attachment takes place before judgment "as security for the satisfaction of any judgment that may be recovered";[4] execution may be had after judgment for its enforcement.[5] The term "garnishment" is little used in California statutes, but in common legal parlance refers to the use of either attachment or execution to reach property of the debtor which is in the possession of a third person.[6] Among such items of property may be wages payable to a debtor by his employer—hence the term "wage garnishment."

The key California provision that limits garnishment of wages is Code of Civil Procedure section 690.11:[7]

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[4] CAL. CODE CIV. PROC. § 537.

[5] CAL. CODE CIV. PROC. § 681.

[6] See Kimball v. Richardson-Kimball Co., 111 Cal. 386, 393, 43 Pac. 1111 (1896). See also RESTATEMENT, JUDGMENTS §§ 35, 36 (1942). A "special note" to § 36 states: "A proceeding by which the plaintiff is enabled to reach and to apply to the satisfaction of his claim a debt owing to the principal defendant is ordinarily called garnishment, and the principal defendant's debtor is called the garnishee. The word 'garnish' means 'warn': the garnishee is warned that he is not to pay his debt to the defendant, his creditor, but to the plaintiff. In some of the New England States the proceeding is called 'trustee process,' and the defendant's debtor is called the 'trustee.'"

[7] California Code of Civil Procedure § 690.10 provides a special exemption for the earnings of "seamen, seagoing fishermen and sealers" in the amount of $150 or $300 depending on conditions specified in the section.

> One-half of the earnings of the defendant or judgment debtor received for his personal services rendered at any time within 30 days next preceding the levy of attachment or execution shall be exempt from execution or attachment without filing a claim for exemption as provided in Section 690.26.
>
> All of such earnings, if necessary for the use of the debtor's family, residing in this State, and supported in whole or in part by such debtor unless the debts are: (a) incurred by such debtor, his wife or family, for the common necessaries of life; or (b) incurred for personal services rendered by any employee, or former employee, of such debtor.
>
> Prior to causing any levy of attachment on earnings of the defendant received for his personal services, the plaintiff shall file with the levying officer an affidavit that the defendant whose earnings are to be attached has been served with a copy of the summons and of the complaint or that the defendant has been given notice pursuant to Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of this code that a writ of attachment on his earnings will issue after eight days from the date of such notice. Such notice shall only be required on the first writ of attachment on earnings.

Two features of this section are of fairly recent origin. First, the provision that half the earnings are automatically exempt was enacted in 1955.[8] Prior to that time the debtor had to file an affidavit of exemption with the levying officer in order to obtain any exemption at all. Debtors are still required to follow this procedure if they want to get more than half of their earnings exempted from levy.[9]

Second, the last paragraph of section 690.11 was added in 1963.[10] It applies only to attachments (not to executions) and is of very limited benefit to debtors: They simply get one more "pay or face the consequences" notice. The provision is of greater help to creditors who are given sanction to send the debtor a threatening notice "that a writ of attachment on his earnings will issue after eight days from the date of this notice." The bill which ultimately became the 1963 amendment started out with entirely different provisions: In its original form it exempted all earnings from levy; an amended version exempted all earnings from attachment and seventy-five per cent (with a maximum of 200 dollars a week) from execution.[11] Subsequent amendments dropped all changes in exemptions and substituted the notice provision.

Soon after enactment of this provision a question arose whether collection agencies could give the notice required by section 690.11. Collection agencies are prohibited from practicing law, from using forms

[8] Cal. Stats. 1955, ch. 793, § 3, at 1393. See also CAL. CODE CIV. PROC. §§ 542(5), 543, 682(1), 682.1, 688, 710.

[9] CAL. CODE CIV. PROC. § 690.26.

[10] Cal. Stats. 1963, ch. 1540, § 1, at 3124.

[11] Assembly Bill 482 (1963). The author was Assemblyman Foran.

resembling legal forms, and from engaging in any unfair or misleading practices.[12] The Collection Agency Licensing Bureau takes the position that the notice may be sent by the collection agency's attorney but not by the agency itself.[13] The Bureau's position was sustained by the Superior Court in Los Angeles County, whose judgment was not appealed and has become final.[14] A bill introduced in the 1965 general session of the legislature would have undone the decision and let collection agencies give the notice.[15]

1. "Common Necessaries" and Exemption Claims

In practical operation section 690.11 exempts only half the wages of the great bulk of debtors—for example, while San Francisco's sheriff levied 1781 attachments and executions in February 1965, he received only 52 exemption claims during that period, a ratio that he considers typical.[16] Two related factors account for this: the "common necessaries" clause of the section and the practical difficulties in obtaining an exemption for more than half of the wages.

Reported decisions on the meaning of "the common necessaries of life" are scant,[17] for the very good reason that few debtors can afford to litigate this issue at all, let alone fight an appeal. In *Los Angeles Finance Co. v. Flores*[18] (where the debtor was represented by the public defender), the debtor's wife had bought him a gold wrist watch for his birthday. The court held this was not one of the common necessaries of life. Noting "the general policy of the courts of this state to give a liberal construction to exemption statutes in favor of the debtor,"[19] the court said that the question of what is a common necessary

> involves a determination of whether or not it is such an article that *in the hands of anyone* it is to be regarded universally, or substantially so, as necessary to sustain life. Obviously, the Legislature, cognizant

[12] CAL. BUS. & PROF. CODE § 6947(h), (k). A regulation of the Collection Agencies Licensing Bureau prohibits such agencies from employing "instruments simulating forms . . . of notice pertaining to judicial proceedings . . . other than to notify the debtor that the matter will be referred to its attorney for appropriate action." 16 CAL. ADMIN. CODE § 628(b)(7).

[13] Stores Collection Bureau v. Powers, Los Angeles Super. Ct., No. 831522 (1965). See also Assembly Interim Comm. on the Judiciary, *Proceedings on Attachments* 44 (June 23, 1964) [hereinafter cited *Hearings*].

[14] Stores Collection Bureau v. Powers, *supra* note 13. Judgment was entered on Jan. 22, 1965. The judgment also prohibits collection agencies from splitting attorneys' fees awarded in their cases with their attorneys.

[15] Assembly Bill 2925 (1965) (introduced by Assemblyman Foran). The bill was not enacted.

[16] *Olson data.*

[17] See generally Seid, *Necessaries—Common or Otherwise*, 14 HASTINGS L.J. 28 (1962).

[18] 110 Cal. App. 2d Supp. 850, 243 P.2d 139 (1952).

[19] *Id.* at 854, 243 P.2d at 142.

of the fact that to the great majority of persons supporting a family the earnings of the past 30 days are required for such basic things as food, heat, shelter, etc. (*common* to all) desired to make sure that these earnings shall not be taken to pay for something less basic.[20]

Los Angeles Finance Co. v. Flores has been of little help to debtors. The half of the wages that is not automatically exempt can be attached by a routine allegation in the affidavit for attachment that the action is brought to collect a debt incurred for the common necessaries of life;[21] for a writ of execution not even an affidavit is needed. If the debtor wants to get that half of his earnings exempted, his road begins by his filing an exemption affidavit. He first has to obtain the forms from the sheriff; they are not given to him at the time his wages are garnished.[22] He completes them in duplicate, "specifying the section or sections of this code on which he relies for his claim to exemption, and all facts necessary to support his claim . . ." and returns the affidavit to the levying officer.[23] Does he then get his wages? No. Then he waits at least five days. During that time the creditor may file a counter-affidavit.[24] If the creditor doesn't, the wages are released.[25] But if he does, they remain tied up for at least

[20] *Id.* at 856, 243 P.2d at 143-44 (1952). This is the latest word on the subject. The court could find only three earlier cases dealing with this clause. White v. Gobey, 130 Cal. App. 789, 19 P.2d 876 (1933), held that clothing bought by the defendant's wife before marriage did not come within the "common necessary" limitation because, having been bought before she became his wife, the articles were not "necessities . . . used for the very maintenance of the debtor's family, for food, clothing and the like . . . ." *Id.* at 792. In Evans v. Noonan, 20 Cal. App. 288, 293, 128 P. 794, 795 (1912), the court said common necessaries of life include "besides food, clothing and shelter such medical attentions in cases of illness as are absolutely requisite to relieve physical suffering and pain and to overcome and conquer disease, if by such attentions it can be done." The third case was an unreported decision, also involving a watch purchase, which *Flores*, in effect, overruled.

It should also be noted that the exemption provisions of California Code of Civil Procedure, § 690.11, do not apply to alimony, child support, and attorney's fees in divorce actions. McIntosh v. McIntosh, 209 Cal. App. 2d 374, 26 Cal. Rptr. 28 (1962); Henry v. Henry, 182 Cal. App. 2d 707, 6 Cal. Rptr. 418 (1960).

[21] CAL. CODE CIV. PROC. § 538. This section also provides that no attachment may be issued where the principal claimed is below $75. Assembly Bill 1127, passed in the 1965 session, Cal. Stat. 1965, ch. 668, § 1, raises this to $125. Attachment in California is available in (1) actions on unsecured contracts, express or implied, (2) support actions, (3) contract and tort actions against nonresidents or persons absent from the state or who conceal themselves to avoid service, (4) unlawful detainer actions, (5) tax collection suits, and (6) suits by the state or any political subdivision to recover funds expended in certain narcotics investigations. CAL. CODE CIV. PROC. § 537. None of the limitations applicable to attachment apply to executions.

[22] The San Francisco Sheriff's Office advised the author that at one time it supplied debtors with affidavit forms at the time of the wage levy, but discontinued this practice following objections from collection agencies.

[23] CAL. CODE CIV. PROC. § 690.26(1).

[24] CAL. CODE CIV. PROC. § 690.26(3).

[25] CAL. CODE CIV. PROC. § 690.26(4).

five more days. During that time either party may move to have the exemption claim heard in court. If no one makes such a motion the wages are then released.[26] If a motion is made, the levy stays in effect pending the hearing and the money remains in the hands of the sheriff.[27] The hearing is to be within fifteen days after the making of the motion.[28] Thus, as much as twenty-five days may elapse between the garnishment and the hearing.

When the claim for exemption finally comes up in court, the debtor has the burden of proof.[29] That means he must prove both that the debt was not incurred for the common necessaries of life and that he needs all of his earnings to support his family.[30] No wonder exemption claims are infrequent.

The special treatment of debts for "common necessaries" is difficult to justify. It can be argued that those who sell essentials should have better means of collecting their debts than companies which extend credit for unessential or luxury purchases. The other side of the picture is that the statute puts the prudent (or poor) family which buys only essentials into a worse position than the family that buys nonessential items on credit. For example, a big medical bill could lead to garnishments[31] while a debt resulting from the acquisition of a luxury car might be exempt from execution on wages—at least where the debtor is sophisticated in the use of the exemption provisions. Thus, to the extent that the distinction between debts for "the common necessaries of life" and other debts really works, the results are paradoxical.

In many cases the distinction disappears in the day-by-day operation of the statute as it affects people in debt. Whatever the origin of their debt, the wage exemption is limited to fifty per cent except for the rare debtor who can successfully follow the exemption steps, take the time out from work to do so, and avoid falling further into debt while he waits for his earnings to be released.[32] As will be discussed below,[33] a fifty

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26 CAL. CODE CIV. PROC. § 690.26(5), (6).

27 CAL. CODE CIV. PROC. § 690.26(8).

28 CAL. CODE CIV. PROC. § 690.26(5).

29 CAL. CODE CIV. PROC. § 690.26(9); Perfection Paint Prod. v. Johnson, 164 Cal. App. 2d 739, 741, 330 P.2d 829, 831 (1958).

30 See Seid, *supra* note 17, at 37.

31 *Hearings* 82.

32 See text accompanying note 16 *supra*. Discussion with Judge Robert J. Drewes, Presiding Judge of the San Francisco Municipal Court, confirms that exemption hearings are infrequent. An examination by the author of 100 cases filed in that court in January 1964, showed at least 47 wage levies (8 attachments, 39 executions and California Code of Civil Procedure § 710 proceedings) in 15 cases. In none was an exemption hearing either moved for or had.

33 Text accompanying note 85 *infra*.

per cent exemption seems neither adequate nor in accord with the legislative objective.

The "common necessaries" rule embodied in section 690.11 is uncommon. Only Idaho, Montana, Nevada, and Oregon apply variations of the California provision.[34] New Mexico repealed its "necessaries" exception in 1961.[35] Delaware and South Carolina use a more perceptive approach to the question of necessaries. In Delaware (New Castle County), ninety per cent of wages are exempt and the excess can be reached only for debts incurred "on account of the purchase of food, provisions and articles used in the home, commonly designated as the necessaries of life, and to taxes owing to the State of Delaware."[36] South Carolina provides for a one hundred per cent exemption but permits a levy, on court order, on fifteen per cent of the salary (but not more than one hundred dollars) if the judgment is for the balance due on "food, fuel or medicine accounts."[37]

2. Multiple Levies

Another feature of California's wage garnishment procedure is that it permits multiple levies, that is, a creditor can levy as frequently as he wants to—every week, for example. Other creditors may levy as well.[38]

Even collection agencies favor some limitation on the number of levies by a single creditor within a given period of time. C. H. McCarty,

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[34] IDAHO CODE ANN. § 11-205(7) (1947) (exemption limited to 50% where debt is for actual "necessaries"); MONT. REV. CODES ANN. § 93-5816 (1964) (limited to 50% where debt is for gasoline or "common necessaries"); NEV. REV. STAT. § 21.090(h) (1963) (follows California wording as to "the common necessaries of life"—50% limitation); ORE. REV. STAT. § 23.180 (1961) (50% of earnings subject to execution where debt is incurred for "family expenses"). See also NEB. REV. STAT. §§ 25-1557, 25-1558 (1964). The latter section grants a 90% wage exemption. The former provides, in part: "Nothing in this chapter shall be construed to exempt from execution or attachment property of the value of more than five hundred dollars for any debt contracted by any person in the purchase of the actual necessaries of life . . . ." These provisions, taken together, apparently do not limit the operation of the wage exemption, but refer to other property which a debtor may claim exempt. Compare NEB. REV. STAT. § 25-1552 (1964); Lyons v. Austin, 126 Neb. 248, 252 N.W. 908 (1934).

[35] N.M. Laws 1961, ch. 8, § 1, at 21.

[36] DEL. CODE ANN. tit. 10, § 10-4913(b) (1953). In Delaware's other two counties 60% of wages are exempt. DEL. CODE ANN. tit. 10, § 10-4913(a) (1953). The practice of having different exemption laws for different counties within a state is limited to Delaware and Maryland. MD. ANN. CODE art. 9, §§ 31, 31A (Supp. 1965). In those two states statutes of many kinds have local variations.

[37] S.C. CODE § 10-1731 (1962). A 1964 law permits attachment of wages for medical care, exclusive of doctor's fees, under certain conditions. S.C. Laws 1964, No. 950, at 2194; S.C. CODE § 71-145 (Supp. 1965).

[38] *Hearings* 19-20, 50-52.

legislative representative for the California Association of Collectors, testified at a legislative committee hearing: "I would like the Committee to examine consecutive garnishment. I don't believe in this and the Association I represent don't [*sic*] believe in it and I think you have it in writing from Mr. Weissman. *This is and can be a very vicious practice. . . . This can really kill a man. He doesn't have a chance.*"[39] However, Joseph J. Weissman, speaking for the same group as McCarty, was willing to limit only the number of attachment levies (to one in any thirty-day period), not the number of execution levies.[40] This would be a meaningless change since multiple garnishments occur mainly under writs of execution rather than under writs of attachment. A survey by the author of one hundred cases in the San Francisco Municipal Court disclosed one case of more than one wage garnishment by virtue of attachment, while writs of execution in thirteen cases produced thirty-nine wage levies. The main reasons for this difference are: (1) Most collection suits are quickly reduced to judgment, usually by default. In many of them little time elapses—often no more than the statutory ten days[41]—between service of the complaint and rendition of judgment. Hence the occasions for multiple attachment levies are limited. (2) The use of writs of attachments in collection suits has been declining.[42] A number of collection agencies do not attach wages before judgment.[43]

Sheriffs are also unhappy about frequently repeated levies.[44] Carl Olson, Chief Deputy, Civil Department, San Francisco Sheriff's Office, notes that when he is instructed to levy every week, he may have to make a levy before he receives the return on the previous week's garnishment. Thus he may be required to make a levy that is both unnecessary and risky. Olson also notes that multiple levies add to the debtor's expense. While the sheriff's fees are initially paid by the creditor, they become part of the costs of the case chargeable against the judgment debtor.[45] The sheriff's fees for each wage levy are two dollars[46] plus thirty-five cents per mile from his office to the point of service, one way,[47] plus one

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39 *Hearings* 49-50. (Emphasis added.)

40 *Hearings* 52. Weissman would also let each creditor continue to levy. *Id.* at 52-53.

41 CAL. CODE CIV. PROC. §§ 585, 407.

42 Note 2 *supra.*

43 *Hearings* 16 (testimony of Robert C. Kopriva, president of the Associated Credit Bureaus of California. Kopriva said: "We don't feel it's fair."). The speed with which the complaint can be reduced to judgment is probably also a factor.

44 *Olson data.*

45 CAL. CODE CIV. PROC. §§ 1031, 1033.7.

46 CAL. GOV'T CODE § 26734.

47 CAL. GOV'T CODE § 26746.

per cent of the amount collected.[48] In addition, there is a clerk's fee of two dollars for issuing a writ of execution.[49]

B. Other States

Garnishment of wages, although it has roots going back to colonial[50] and even medieval times,[51] is a statutory procedure.[52] The varying state laws, observes one writer, "are about as individual as snowflakes."[53] The different approaches to wage exemptions in each state are illustrated by the summary in Appendix A to this article. Upon closer examination certain characteristics emerge from the statutory jumble.

1. Exemptions in Large States

In large states exemptions tend to be high. Comparing California, Florida, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Texas—the ten most populous states—California is among the least generous. Half of these ten states exempt ninety or one hundred per cent of earnings (Florida, New Jersey, New York, Pennsylvania, and Texas), Illinois exempts eighty-five per cent and two others, Michigan and Massachusetts, have a one hundred per cent exemption prior to judgment.[54]

Thus, a married man earning one hundred dollars a week would have the following exemption in these states:

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[48] CAL. GOV'T CODE § 26739. Despite these fees, the county seems to pay a substantial portion of the collection costs. Carl Olson of the San Francisco Sheriff's Office reports that in 1963-64 his office received $113,554 as fees from all services. He estimates the cost of operating his office as exceeding $250,000 annually. In Los Angeles County, the cost of operating the Sheriff's Civil Division is about $430,000 per year. The Division receives for fees and mileage approximately $220,000. To what extent should society subsidize the collection process? Raising fees would increase the burden on the debtors unless at the same time creditors are required to pay part of the cost. Utah provides that such costs are not to be charged to the judgment debtor. UTAH CODE ANN. § 78-23-1(7) (1953). In Delaware, the debtor's cost liability is limited to $0.90 per levy. DEL. CODE ANN. tit. 10, § 10-4913(c) (1953). A reduction in multiple levies would tend to alleviate the cost burden both of the debtor and of the community.

[49] CAL. GOV'T CODE § 26828. There may be several levies under a single writ: A writ can remain in effect for 60 days before it has to be returned. CAL. CODE CIV. PROC. § 683.

[50] Mussman & Riesenfeld, *Garnishment and Bankruptcy*, 27 MINN. L. REV. 1, 9-10 (1942).

[51] Riesenfeld, *Collection of Money Judgments in American Law*, 42 IOWA L. REV. 155 (1957).

[52] See Sanders v. Armour Fertilizer Works, 292 U.S. 190 (1934).

[53] Seid, *supra* note 17, at 33.

[54] Among this group of states, the post-judgment exemption could be as low as California's only in Massachusetts and Michigan. Depending on the circumstances it may be higher or lower in those states. See notes 199, 201 *infra* and accompanying text.

TABLE 1
WAGE EXEMPTION IN TEN LARGEST STATES FOR MARRIED PERSON EARNING $100 PER WEEK[55]

State	Before Judgment	After Judgment
Florida	$100	$100
Pennsylvania	100	100
Texas	100	100
Massachusetts	100	50
Michigan	100	50
New Jersey	90	90
New York	90	90
Illinois	85	85
Ohio	75	75
California	50	50

It should be added that some states do not expressly prohibit wage levies prior to judgment but unlike California do not make any attachment process prior to judgment freely available in contract actions, limiting the attachment remedy to special circumstances.[56] To the extent that these limitations work,[57] they tend to give debtors a one hundred per cent wage exemption before judgment.

2. *The Trend of Statutory Changes*

Wage exemption statutes change frequently, as a comparison with their versions of a decade ago discloses.[58] The direction of the change is almost uniformly toward increasing the exemption of the debtor; at least twenty states did so between 1954 and 1964.[59] Some of these states, and others as well, also made changes in garnishment procedures. Among

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[55] The Michigan computations assume that the garnishment is the first in the case; the California figures are based on the 50% exemption—because of its prevalence—discussed in text at p. 1217; the Ohio exemption is computed positing the Ohio practice as set forth in Note, *Garnishment of Wages in Ohio*, 21 U. CINC. L. REV. 268, 274-75 (1952). It should be noted that in both Michigan and Ohio judgment debtors can, in effect, obtain substantially higher exemptions under statutory conciliation and trusteeship provisions, respectively. Notes 76-78 *infra* and accompanying text. Under the Michigan procedure, partial payment orders made by the court customarily require the debtor to pay 10% of net income if married, 15% if single. FUSFELD, DON'T GET GARNISHEED! 16 (Michigan State University, Labor and Industrial Relations Center, undated).

[56] See generally 6 AM. JUR. 2d *Attachment & Garnishment* §§ 218-51 (1963).

[57] For an indication that they may not work well, see Note, *Garnishment in Kentucky—Some Defects*, 45 KY. L.J. 322 (1956-57).

[58] *Compare* Abrahams & Feldman, *The Exemption of Wages from Garnishment*, 3 DE PAUL L. REV. 153 (1954), *with* Note, *State Wage Exemption Laws and the New Iowa Statute*, 43 IOWA L. REV. 555 (1958).

[59] One state, Iowa, decreased the exemption. See Note, *State Wage Exemption Laws and the New Iowa Statute*, 43 IOWA L. REV. 555 (1958).

these states were California, as discussed above, and New York.[60] Increases were enacted particularly often in states where the exemption is (or had been) tied to dollar amounts.[61] Dollar figures in such statutes—even as maxima or minima—tend to get out of date; during an inflationary period, such as the one following World War II, they rapidly become inadequate. Thus they require continuous legislative attention, and even then revision tends to lag. When revision is not forthcoming, the exemption sometimes approaches meaninglessness, as in Kentucky where the ceiling is 67.50 dollars a month.[62] Some years ago a writer observed that when the Kentucky statute was first enacted its effect was to grant a one hundred per cent exemption for most employees; at the time he wrote it amounted to about a twenty-five per cent exemption.[63] To eliminate this problem several states shifted from dollar to percentage exemptions.[64] The latter type of exemption has the added advantage that its computation is simple and uniform, regardless of whether an employee is paid on a weekly, monthly, or other basis. When an exemption statute is framed wholly or partially in dollar amounts, extra computation, often involving an element of uncertainty, is required whenever the pay period is not identical to the period which the statute uses in formulating the exemption.

3. General

Features occurring in several state exemption statutes require additional comment.

As already noted some states, such as Michigan and Massachusetts, do not permit wage garnishments prior to judgment. This reflects a recognition that garnishment, with its possible serious consequences for the debtor,[65] is less justifiable before the merits of the creditor's claim are established than once a judgment has been obtained.

In a number of states, among them Connecticut, Delaware, Illinois, Kansas, Louisiana, New York, and West Virginia, only one judgment

[60] *Compare* N.Y. CIV. PRAC. LAWS & RULES § 5231, *with* N.Y. CIV. PRAC. ACT § 684. See also commentary following § 5231.

[61] *E.g.*, Alaska, Connecticut, Georgia, Hawaii, Illinois, Maine, Massachusetts, Michigan, New Mexico, North Dakota, Ohio, Oregon, Virginia, Vermont, and West Virginia. *Compare* Abrahams & Feldman, *supra* note 58, at 157, 161, *with* Appendix A *infra*.

[62] KY. REV. STAT. §§ 427.010(2), (3) (1962).

[63] Note, *Garnishment in Kentucky—Some Defects*, 45 KY. L.J. 322, 329 (1956-57).

[64] Illinois, Maryland (in part), Vermont, and West Virginia. *Compare* Abrahams & Feldman, *supra* note 58, at 157, *with* Appendix A *infra*. Iowa, again contrary to trend, shifted the other way. See note 59 *supra*. Exemptions generally remained unchanged in states specifying percentages except where the percentages are combined with dollar amounts. Colorado raised its flat percentage exemption from 60 to 70% (for heads of families; bachelors are required to get along on 35%).

[65] See text commencing at note 85 *infra*.

creditor may levy against wages at one time.[66] Generally the first creditor who gets his papers to an officer is given priority until he is paid off; this seems desirable to minimize economic pressures from more than one creditor concurrently. Such provisions have been criticized from the point of view of collection agencies because one creditor with a substantial judgment can exclude all others for a long time.[67]

Provisions of the kind just mentioned are usually combined with others that have the effect of doing away with the need for repeated levies by the same creditor. Thus the New York and Louisiana statutes provide for installment payments by the employer.[68] Other states make the initial execution levy a continuing one.[69] Such a procedure greatly simplifies the garnishment process and reduces its expense. It eliminates the cost of multiple garnishments by a single creditor, at least as long as the debtor retains his employment.[70] Further, it tends to assure other judgment creditors who have to wait their turn that the prior judgment is actually being paid off on a regular and reliable basis.

Some states give the courts far more flexibility in dealing with wage exemptions than does California. Thus in New York, what is there termed an "income execution" is obtainable without a court order, but is subject to judicial modification.[71] The New York statute has been interpreted to permit courts to raise the exemption where garnishment of the normal amount is "unduly burdensome" to the judgment debtor.[72] In Connecticut an execution is subject to modification as the judge "deems reasonable";[73] moreover, before any execution can be levied the court first orders the defendant to make reasonable payments in an amount set by the court.[74]

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66 For illustrative provisions see CONN. GEN. STAT. REV. § 52-361 (Supp. 1964); D.C. CODE ANN. § 16-572 (Supp. 1965); LA. REV. STAT. tit. 13, § 3922 (1964); N.Y. CIV. PRAC. LAWS & RULES § 5231(h).

67 *Hearings* 36. A second criticism was that provisions of this kind put "a premium on time rather than negotiation. If you had such a restriction, each creditor would be prone to act as rapidly as possible with a writ in lieu of negotiating or attempting a payment program . . . ." *Id.* at 53.

68 LA. REV. STAT. tit. 13, § 3923 (1964); N.Y. CIV. PRAC. LAWS & RULES §§ 5231(a), (2).

69 *E.g.*, CONN. GEN. STAT. REV. § 52-361 (Supp. 1964); D.C. CODE ANN. § 16-572 (Supp. 1965); ILL. REV. STATS. § 62-77 (1963).

70 As to who bears this cost see note 48 *supra* and text accompanying notes 45-49 *supra*.

71 N.Y. CIV. PRAC. LAWS & RULES §§ 5230, 5231(g), 5240.

72 First Westchester Nat'l Bank v. Lewis, 42 Misc. 2d 1007, 249 N.Y.S. 2d 537 (Westchester County Court 1964); Seigel, Supplementary Practice Commentary following N.Y. CIV. PRAC. LAWS & RULES § 5231 (McKinney's Cons. 1964 Supp.).

73 CONN. GEN. STAT. REV. § 52-361 (f) (Supp. 1964).

74 CONN. GEN. STAT. REV. § 52-361(a) (Supp. 1964). The court has great flexibility: "In fixing the amounts to be paid and the manner of payment, the court or justice of the peace may take into consideration the circumstances of the defendant, including any other actions pending or judgments outstanding against him, the amount of the defendant's income and the amount of the claim or demand. Upon proof of change of circumstances of the

If the defendant fails to make such payments, the creditor can then obtain an execution.[75] Michigan provides a similar procedure: The defendant, at the time of judgment or later, may obtain an order permitting him to pay the judgment in installments, and the creditor cannot garnish as long as the defendant complies with the order.[76]

Not part of the exemption statutes, but closely related to them, are procedures in a few states, notably Ohio and Wisconsin, for the appointment of a trustee by the court at the request of the debtor, amortization through the trustee of the defendant's debts, and protection of the defendant from garnishments during the functioning of the trusteeship.[77] In Ohio this procedure is available to any debtor facing garnishment. In some Ohio courts the clerk serves as trustee without compensation; in others the court appoints a suitable person who receives two per cent of the debtor's payments as full compensation. The debtor lists his creditors in the application and is required to pay only the nonexempt portion of his earnings to the trustee who distributes the money to the creditors. The creditors are required to accept the trusteeship; they are barred from garnishing wages as long as the debtor regularly pays the nonexempt portion.[78]

The Wisconsin procedure is of less help to debtors. Only debtors with incomes of 5,000 dollars a year or less may use it.[79] The trustee must determine whether an amortization plan under which creditors will be paid off within two years is feasible, and creditors may object to any proposed plan.[80] Thus in Wisconsin, unlike Ohio, a debtor who can only

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defendant, any order for payments by the defendant may, at any time, be set aside or altered upon the motion of either party after notice and hearing."

[75] CONN. GEN. STAT. REV. § 52-361(b) (Supp. 1964). The court issues such execution *ex parte*. In New York, the income execution is first served on the defendant; if he defaults for 20 days it is served on the garnishee. N.Y. CIV. PRAC. LAWS & RULES §§ 5231(c), (d). Siegel, note 72 *supra*, comments that the purpose is to enable "the judgment debtor to avoid embarrassment and possibly the more serious consequence of dismissal by making the 10% payments himself." Siegel further notes that only between 11% and 20% of judgment debtors have made the payments themselves, and questions whether the system should be continued. Compare OHIO REV. CODE ANN. § 1911.40 (1953).

[76] MICH. STAT. ANN. §§ 27A.6201-27A.6251 (1962). This procedure apparently is not widely used except in Wayne County. Even there it is not very successful; in 1957, more than 70% of partial payment orders were vacated because of nonpayment. FUSFELD, *op. cit. supra* note 55, at 17.

[77] OHIO REV. CODE ANN. §§ 2329.70, 2329.71 (Supp. 1964); WIS. STAT. ANN. § 128.21 (1958).

[78] OHIO REV. CODE ANN. § 2329.70 (Supp. 1964); Note, *Garnishment of Wages in Ohio*, 21 U. CINC. L. REV. 268 (1952).

[79] WIS. STAT. ANN. § 128.21(1) (1958).

[80] WIS. STAT. ANN. § 128.21(3) (1958). The Wisconsin proceeding is part of a comprehensive system for the voluntary and involuntary administration of insolvent assets for the benefit of creditors. This system has been sustained against a claim that it is in competition with and hence superseded by the federal bankruptcy law. In the Matter of Wisconsin Builders Supply Co., 239 F.2d 649 (7th Cir. 1956), *cert. den.*, 353 U.S. 985 (1957).

afford to pay the nonexempt portion of his wages into the plan and who has many or large debts may not be able to avail himself of the procedure.

The Ohio and Wisconsin statutes provide procedures that resemble the federal wage earners' plans[81] and that may, particularly in Ohio, be simpler and less costly to use than the federal plan, as well as more readily accessible to the average debtor.

Exemption statutes often provide lower exemptions for single persons than for heads of families. California, in effect, makes such a differentiation. Bachelors need less money to live on, so the thinking apparently goes. This may be true, but the value of such a statutory distinction is doubtful, especially in states where the exemption is a percentage of earnings rather than a flat amount. The unmarried person will often be either young, starting his career and at a fairly low level of earnings, or divorced and making support payments. In either case, to maintain a minimum standard of living he is likely to need about as high a percentage of his earnings as a married person.

Some statutes also limit the exemption to residents, adding a complication of dubious value. There is substantial merit in having an exemption statute that is uniform in its operation and easily understood and administered. Illinois a few years ago changed from a dollar exemption limited to heads of families to a percentage exemption applicable to everyone; the drafters took care to make clear the general applicability of the statute: "This exemption (and no other) applies irrespective of (1) the marital status of the employee, (2) the place where the compensation was earned or payable, and (3) the state where the employee resides."[82] Other large states whose exemptions disregard marital status are Pennsylvania, Texas, New Jersey, and New York.[83] By contrast, the Florida exemption applies only to resident heads of families, Ohio limits single men to one hundred dollars a month, and Michigan has an incredibly complicated scheme, uniquely its own, that distinguishes between householders and others, first and subsequent garnishments, and weekly and other pay periods.[84]

II

FORMULATING A WAGE GARNISHMENT POLICY

Should California continue to permit wage garnishments? If so, under what conditions? With what kind and amount of wage exemption? To

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81 The so-called chapter 13 proceedings, 52 Stat. 93 (1938), as amended, 11 U.S.C. §§ 1001-86 (1964).

82 ILL. REV. STAT. § 62-73 (1963). The change took place in two stages, the first occurring in 1959 and making the exemption uniform. Ill. Laws 1959, Garnishment Act § 6, at 1959; Ill. Laws 1961, Wage Deduction Act, § 3, at 1470. For the pre-1959 law see ILL. REV. STAT. § 62-14 (1957).

83 See Appendix A *infra*.

84 Notes 187, 214, 201 *infra*.

help formulate answers to these questions, this section of the study considers several factors that may be relevant when viewed together with the considerations already discussed.

A. Adequacy of the Fifty Per Cent Exemption

As noted, the California wage exemption is limited to fifty per cent in most cases.[85] Such a low ceiling defeats the purpose of putting needed earnings beyond the reach of process. "The basic theory of [the wage] . . . exemption is that a debtor and his family, regardless of the debtor's improvidence, will maintain enough money to retain a basic standard of living in order that the debtor may have a fair chance to remain a productive member of the community."[86]

What is "a basic standard of living?" No hard and fast answer can be given, but it seems fairly clear that for the bulk of low-to-middle-income wage earners the exemption is grossly inadequate. The U. S. Department of Labor's family budget for an employee with a wife and two children is 6,859 dollars a year for a family living in San Francisco and 6,882 dollars for one in Los Angeles.[87] This budget is designed to maintain a family at a "modest but adequate" standard of living.[88] Even if one considers these figures high, recent average earnings in the manufacturing industry were 130.47 dollars per week in San Francisco and 119.36 dollars in Los Angeles,[89] or 6,784 dollars and 6,207 dollars a year, respectively.

Few would deny that a family with earnings in that range would need most of its income to maintain a living standard of some decency. Any sharp reduction in earnings, aside from causing immediate hardship, is likely to acutely aggravate the debt problems of the family, bringing

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[85] See text following note 15 *supra*.

[86] Perfection Paint Prod. v. Johnson, 164 Cal. App. 2d 739, 741, 330 P.2d 829, 830 (1958). In Bailey v. Superior Court, 215 Cal. 548, 554, 11 P.2d 865, 867 (1932), the court said that "the underlying purpose of the statute exempting from execution certain property is to provide for the support and welfare of the family of the person claiming exemption." See also Holmes v. Marshall, 145 Cal. 777, 778-79, 79 Pac. 534, 535 (1905).

[87] Information obtained by telephone from the United States Department of Labor, San Francisco office. Data applicable for March 1965 (adjusted for cost of living increase from 1959 budget); see Lamale & Stotz, *The Interim City Worker's Family Budget*, MONTHLY LABOR REV. 785, 787 (1960). The 1959 budget was approximately $6,300 for the two cities.

[88] Compare reference to Heller Committee budget of $7,088 a year for a family of four, based on "a commonly accepted standard of living as the sum of those goods and services necessary to health and reasonably comfortable living. . . . On a weekly basis the annual budget is equal to about $136.00." *Hearings* 83.

[89] Information obtained by telephone from the United States Department of Labor, San Francisco office. Data applicable for March 1965; CALIFORNIA DIV. OF LABOR STATISTICS AND RESEARCH, CALIFORNIA LABOR STATISTICS 18, 21 (Bull. No. 488-A, March 1965). For a more detailed study see U.S. DEPT. OF LABOR, OCCUPATIONAL WAGE SURVEY, SAN FRANCISCO-OAKLAND (Bull. No. 1430-37, Jan. 1965).

action by other creditors and a chain reaction leading to family economic disaster.[90] The costs of the low exemption to the debtor, his family, and the community (including other creditors) are high. While precise data are lacking, wage garnishment is probably predominantly used against debtors in the low-to-middle-income groups; "garnishee" is one word that is better known among the poor than among those who are economically well off.[91]

If the lowness of the exemption were the only serious problem posed by wage garnishments, it could be dealt with by increasing the exemption substantially. Unfortunately there are other related problems not capable of such simple solution. These are considered next.

B. Garnishment and Employment

It is hardly news that an employee who gets his wages garnished runs a serious risk of being fired—at least if he permits it to happen repeatedly. The employee's fear of discharge collects at least as much money for creditors as actual levies; it may well collect more.[92]

One observer, who worked in the personnel department of several plants, reports that in every case the company set a limit on the number of garnishments that it would tolerate within a given period as to any employee; some companies regard a single garnishment as grounds for discharge. He notes that "it is detested as an unmitigated nuisance by employers to such an extent that even union contracts tacitly or specifically recognize the right of an employer to discharge an employee whose debts result in more than a prescribed number of garnishments within a specified period."[93]

While collection agencies tend to minimize the problem of discharges,[94] they recognize that the threat of garnishment "collects an awful lot of

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90 For illustrative case studies see CENTER FOR CONSUMER AFFAIRS, UNIVERSITY OF WISCONSIN, UNIVERSITY EXTENSION, THE SPENDER SYNDROME [hereinafter cited as SPENDER SYNDROME], cases 1, 6, 9, 19, 21, 31, 37, 44, 48, 51, 65, 67 (1965). Some of the families involved in that study had to receive welfare grants because of garnishments. *Id.* at cases 9, 37, 44.

For data as to the substantial proportion of income which is used for repaying consumer credit, see text commencing with note 160 *infra*.

91 CAPLOWITZ, THE POOR PAY MORE 21 n.7 (1963). Credit merchants sell to the poor as well as to higher income groups (though they may not be the same merchants). The proportion of low income families with consumer installment debt is about the same as the national average. *Id.* at 101. Most poor persons use credit for some major purchases. *Id.* at 100.

92 See Conard, *An Appraisal of Illinois Law on the Enforcement of Judgments*, 1951 U. OF ILL. L.F. 96, 100. The article is written from a viewpoint favorable to creditors.

93 Note, *Garnishment in Kentucky—Some Defects*, 45 KY. L.J. 322, 330 (1956-57). The article is written from a point of view favorable to debtors. See also Note, *State Wage Exemption Laws and the New Iowa Statute—A Comparative Analysis*, 43 IOWA L. REV. 555, 557 (1958).

94 See *Hearings* 56-57.

money."[95] At a recent California legislative hearing, one California legislator gave his experience:

> I know that there are companies that have inflexible rules if they have so many attachments. They are discharged regardless of whether they are valuable employees or not. . . . Now this is my own experience so I know what I am talking about in this respect, and you may be right that it is only a small percentage, but this is very important to these people who lose their jobs because of attachments. I've seen it done time and again and many of these people, you know we might as well admit it, they maybe don't go to their lawyer, if they do go they haven't any money to pay him.[96]

He said that "most of the companies have a rule, sometimes only one and a maximum of three [garnishments] and they lose their job."[97] Other legislators also expressed their concern.[98] The then research director of the California Labor Federation, Don Vial, gave numerous examples of discharges resulting from garnishments.[99] The resulting hardship can be acute, as illustrated in a letter to Vial by a former Dow Chemical Company employee, an agricultural research assistant who was earning $5,000 a year. Marital and child custody problems required the employee to seek extensions of time to pay his bills, and one creditor, after four months' delinquency, turned the debt over to a collection agency. What happened next is graphically described by the ex-employee:

> They, (the collecting agency) immediately wrote my employer. They, (the Dow Chemical Company) told me that if the creditor attached, they would have to let me go. I went and talked to the people at the collection agency and explained this situation. They demanded half the amount which was $125.00 and I said I did not even have $5.00, and they said they would attach my wages. I reasoned that they wouldn't because they could only get so much money and they knew I would get fired. Well, they attached and they got $80.00 or $90.00 and I got fired. Since last April I have not been able to get any kind of job in my field because they all checked and Dow says I was fired because of a wage attachment and the prospective employer treats me like I had ten tails and I think it is a stinking mess.[100]

Nor is this an isolated case. A number of union officials wrote of job losses by their members as a consequence of wage garnishments, "of the hopelessness of the situation many members found themselves in,"

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[95] *Id.* at 29 (testimony of Kenneth McGilvray, legislative counsel for Associated Credit Bureaus of California).

[96] *Id.* at 59 (remarks of Assemblyman Harvey Johnson).

[97] *Id.* at 18-19; see *id.* at 71.

[98] *E.g.*, comments of Assemblyman Milton Marks, *id.* at 7, 8.

[99] *Id.* at 62-64.

[100] *Id.* at 63.

and of "extreme hardship."[101] Vial summed up the paradoxical effect of wage garnishments by noting that while preservation of the debtor's ability to pay is important in order to have debts paid, garnishment-induced discharges destroy ability to pay. The fear of discharge, Vial added, "is a real factor that causes a debtor to take the course of bankruptcy which may be the less offensive alternative to him but the worst from a public policy point of view."[102]

Thus, garnishment of wages poses problems not only of actual loss of employment, but of threatened loss with its attendant temptation to use bankruptcy as a way out (discussed in detail below). Aside from bankruptcy, the question remains whether society should consider the threat of loss of employment as a legitimate debt-collecting device. We have given up imprisonment for debt; do we want to tolerate joblessness for debt?

Short of abolishing wage garnishments, the possibilities for dealing with the employment problem are principally: (1) to attempt to prohibit discharges based on garnishment; (2) to utilize a trusteeship procedure, such as the Ohio one, which gives an employee protection against garnishments and at the same time provides for amortized payment of his debts; or (3)—possibly in conjunction with (2)—to increase the exemption and modify the garnishment procedure.

Discussing these in inverse order, the third alternative is likely to have an ameliorative effect on discharges to the extent that it decreases the use of wage garnishments. Yet in New York, whose garnishment law is relatively favorable to debtors, garnishments apparently still lead to discharges: Several bills were introduced in the 1965 session of the New York legislature designed to prohibit firings based on that ground.[103] This is not to suggest, however, that such an approach may not reduce the problem.

Trusteeship would benefit employees who can avail themselves of legal services and arrange for regular payment to the trustee of the non-exempt part of their wages. Essential to the success of any such procedure would be the enthusiastic co-operation of the courts and a very low (if any) deduction from payments for administrative costs. Society now handsomely subsidizes the garnishment process;[104] the subsidy could well be shifted to trusteeships. The success of this kind of trusteeship in California is obviously uncertain. By itself, it is probably of limited value;

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101 *Id.* at 64. For case studies see SPENDER SYNDROME *passim*.

102 *Hearings* 62.

103 Senate Intro. 2168 (1965); Senate Intro. 2299 (1965); Senate Intro. 3061, Assembly Intro. 4920, vetoed July 19, 1965; Senate Intro. 4146 (1965); Senate Intro. 4164, Assembly Intro. 3577 (1965).

104 See note 48 *supra*.

bankruptcy rates in Ohio and Wisconsin are not very different from those in California.[105]

The most straightforward way would be to provide that an employee shall not be discharged because of wage garnishments. This was, in essence, the approach of the New York bills.[106] The question that immediately arises is how such a law would be enforced. What about the employer who dislikes garnishments and looks for—and finds—other reasons to discharge the employee whose wages are "hit"?[107] These obstacles are real but not insuperable. First, as to the problem of deciding whether an employee was "really" discharged because of garnishments or for some other reason, the National Labor Relations Board and the United States courts of appeals have for over a quarter of a century applied a provision of the Labor-Management Relations Act[108] that poses an analogous problem. Under that act an employer may discharge an employee for any reason, even for no reason, as long as he doesn't do it because of the employee's union membership or activities.[109] The Labor Board and the courts frequently resolve the issue of whether an employee was discharged because he belonged to (or was active in) a union or because of other

[105] If trusteeship were an effective tool against threatened loss of employment due to wage garnishments, then one would anticipate lower individual bankruptcy rates to the extent that debtors no longer need to turn to bankruptcy to safeguard their job. The measure is obviously imprecise. The following data are taken from the BANKRUPTCY STUDY COMM., AMERICAN COLLECTORS ASS'N, ANNUAL REPORT 14-15 (1963-64) [hereinafter cited as ACA BANKRUPTCY STUDY COMM.].

State	No. of families for each individual bankruptcy—1950	Same—1960
California	975	175
Ohio	678	200
Wisconsin	1446	104
All U.S.	1504	377

See also Table 2 accompanying note 123 *infra*.

[106] Thus, Senate Intro. 2168 would have amended the N.Y. labor law to make such discharges an unfair labor practice. Senate Intros. 2299, 3061 and 4164 would have amended the provisions with income executions to provide that "it shall be unlawful for an employer to discharge an employee against whom an income execution . . . is served . . . solely because of such service . . . ." Two of these bills further made such a discharge a misdemeanor. Senate Intro. 4146 also would have prohibited discharge. It added the interesting provision that an employer would remain liable on the income execution—on the continuing garnishment —as though he had not discharged the employee. The approach of Senate Intro. 2168 is not available in California because it does not have a labor law that specifies unfair labor practices.

[107] See *Hearings* 8.

[108] 61 Stat. 136 (1947), as amended, 29 U.S.C. §§ 141-87 (1964).

[109] 61 Stat. 140 (1947), as amended, 29 U.S.C. §§ 158 (a)(1), 158 (a)(3) (1964).

reasons. Presumably, whether the discharge was for garnishments is also capable of determination. However, resolution of discharge problems under the Labor-Management Relations Act often involves complex and protracted hearings. It may well be doubted whether employers should be subjected to the expense of extended trials dealing with alleged garnishment discharges. It may be doubted, too, how many employees could, as a practical matter, avail themselves of the benefits of such a law.

The employee would have to turn to the courts; California has no counterpart of the NLRB. A law of this type would not, in all likelihood, be effectively enforced through criminal sanctions; district attorneys, already burdened with more pressing matters, would be less than eager to initiate prosecutions, particularly against respected companies. The individual employee could not afford the expenses of litigation, which would be several hundred dollars for the simplest case and could easily be many times that amount. However, a substantial number of employees might be aided by their unions; when the union carries the ball on behalf of a discharged member, judicial resolution would become feasible. Under some collective bargaining agreements the issue could also be submitted to arbitration, which would provide a speedier and less expensive determination.

Quite apart from the difficulties of litigation, employers might well object that their right to discharge for garnishments should not be impaired: Not only does the processing of garnishments entail extra work and expense for the employers, but, the argument runs, they have a legitimate interest in the financial responsibility of their employees—an employee in deep financial trouble may not be a very productive one. There is merit in such contentions, although they are not necessarily decisive. A family's financial crisis may have widespread effects: effects on the creditors, effects on the legal machinery of society, effects often enough in terms of unemployment insurance, welfare payments, personal tensions, and even family break-up.[110] Employers are not automatically entitled to be exempt from these effects.

In fact, a no-discharge-for-garnishments rule could well have the healthy effect of encouraging more employers to take an active interest in the debt problems of their employees. The wise use of credit is a complex skill that has to be learned; employers—at least large ones—can do a great deal by way of providing information and counseling, as well as assistance through avenues such as credit unions. Some of this, of course, is being done already.

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110 It is not suggested here that garnishments are the principal cause of financial crisis, but they commonly are the precipitating event.

C. *Garnishment and Bankruptcy*

> I'm not one to run up my bills nor am I one to say a man should not have to pay his bills. Wage attachments forced me to declare bankruptcy and almost cost me my job. Once, there wasn't a week passed that my check wasn't attached.[111]

> My wages were attached twice in 1959 against debts incurred in a previous marriage. I had remarried and my wife was pregnant and so to protect my job I was forced to file bankruptcy. . . . My total indebtedness amounted to $2,000, and I would have gladly paid it off given a decent chance and with no threat to my job.[112]

These statements illustrate a serious effect of wage garnishments. An employee who is threatened with discharge as a result of a garnishment often turns to bankruptcy as his last resort. Attorneys doing bankruptcy work are abundantly familiar with the situation of a client who first walks in, garnishment papers in hand, and announces: "My boss says: 'One more of these and I'm through.' I guess I better file bankrupt." In the words of one such attorney, who is also a legislator: "I am connected with an office that handled a few bankruptcies, and I'd say 95% are for the purpose of saving their jobs, and the employers, I think, have a rule of two or possibly three attachments within twelve months then they lose their jobs."[113]

Garnishment is not the only factor that contributes to bankruptcies, but even collection agencies agree that they often trigger bankruptcies whatever the underlying causes may be.[114] And bankruptcies are rising with dizzying speed. In California the number of bankruptcy petitions increased from 4,124 during the year ending June 30, 1950, to 19,404 in

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[111] *Hearings* 63.

[112] *Id.* at 64. For other graphic illustrations see SPENDER SYNDROME cases 1, 6, 9, 31, 48, 51. Recent studies of personal bankruptcies in Michigan and Arizona indicate a substantial concentration of bankruptcies among married blue collar workers, with children, and with an income between $3,000 and $6,000 a year. See, *Personal Bankruptcy a Class Problem*, 19 PERSONAL FIN. L.Q. 111 (1965); *Consumer Bankruptcies*, FINANCE FACTS (Monthly newsletter of the National Consumer Finance Association, June 1965).

[113] *Hearings* 71 (remarks of Assemblyman Harvey Johnson). The interchange immediately following this statement between Assemblyman Johnson and Mr. Vial brought out that collective bargaining agreements do not protect employees against discharges based on garnishments, because "the employer does not want to negotiate on this type of an issue." *Id.* at 71. If the union "tried to make this a collective bargaining issue they would not likely succeed because it does not involve working conditions specifically. . . . I am not saying that I agree with this. I am saying that it is very difficult to negotiate in this area." *Id.* at 72. The NLRB does not protect against this kind of discharge unless it is motivated by a desire to discriminate against a union adherent. *E.g.*, Michigan Lumber Fabricators, Inc., 111 N.L.R.B. 579 (1955); Bardon of Hollywood, 48 N.L.R.B. 1055 (1943); Chambers Corp., 21 N.L.R.B. 808 (1940). Compare Campbell Coal Co., 112 N.L.R.B. 941 (1955).

[114] *Hearings* 21.

1960 and 29,651 in 1964—an increase of over fifty per cent in the past five years alone and of over six hundred per cent during the fifteen-year period.[115] More than ninety per cent of these were nonbusiness bankruptcies in 1964: They were filed by individuals and families whose personal debts had become too much for them.[116] If the overall increase in bankruptcies has been rapid, personal bankruptcies have been rising even faster, both in California and throughout the country.[117]

Today one out of every six persons who files bankruptcy does so in California.[118] Why is bankruptcy a matter of concern? First, as Myers notes: "The bankruptcy problem is important because of the human distress it represents. Although uninformed people may minimize the gravity of the consumer bankruptcy problem by saying that only one-tenth of one per cent of the population goes bankrupt, there is a qualitative dimension in human distress that is understated by such statistics."[119]

Secondly, losses from nonbusiness bankruptcies now exceed one billion dollars a year nationally.[120] Wage garnishments that precipitate bankruptcy hurt not only the debtor and his family but a good many creditors as well.

The extent to which wage garnishments contribute to bankruptcy cannot be measured precisely. We do not know in how many individual bankruptcies a garnishment was the last straw. Even if we knew, we could not tell how many such bankruptcies would have happened sooner or later in any event. We are not entirely without data: We know the number of bankruptcies on a state-by-state basis and we know the garnishment laws of the states. Any comparison between them must be treated with great

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115 1950 DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, ANNUAL REPORTS [hereinafter cited ANNUAL REPORT] Table F-2; 1960 *Id.* at Table F-2; 1964 *Id.* at Table F-2. California is not alone. Between 1947 and 1963, nonbusiness bankruptcies in the U.S. increased 1260% while the population grew 31.3%. Myers, *Non-Business Bankruptcies*, in PROCEEDINGS OF TENTH ANNUAL CONFERENCE, COUNCIL ON CONSUMER INFORMATION 2. They nearly quadrupled in the decade 1953-62. See also Countryman, *The Bankruptcy Boom*, 77 HARV. L. REV. 1452 (1964).

116 1964 ANNUAL REPORT Table F-3. Of the 29,651 bankruptcy petitions filed in California in 1964, 26,980 or 91% were personal bankruptcies. The figures for nonbusiness or personal bankruptcies used throughout are the sum of the voluntary "employee" and "other non-business" bankruptcy filings shown in Table F-3.

117 In California, personal bankruptcies rose from 17,265 in 1960 to 26,980 in 1964, up 56%. All other bankruptcy filings rose from 2,139 to 2,671, up 25%. The U.S. figures for the same years are: personal bankruptcies—97,742 and 155,193, up 59%; all other bankruptcies—12,292 and 16,526, up 34%. 1960 ANNUAL REPORT Tables F-2, F-3; 1964 *Id.* at Tables F-2, F-3.

118 During the year ending June 30, 1964, 26,980 nonbusiness bankruptcy petitions were filed in California, 155,193 in the U.S. Note 117 *supra.*

119 Myers, *supra* note 115, at 9. Myers argues that bankruptcy is at least as important as many medical and social problems whose per capita incidence is no higher and toward whose solution we contribute generously.

120 *Id.* at 9-10; Countryman, *supra* note 115, at 1456.

caution: A correlation does not necessarily mean a cause and effect relationship. Garnishment laws may not be the only relevant factor with respect to which one state differs from another. Further, bankruptcies have been rising in all states, even those that do not permit wage garnishments.[121]

There is a consensus among referees and students of bankruptcy problems that the number of individual bankruptcies in a state is significantly affected by the leniency or harshness of its garnishment laws.[122] Subject to the limitations mentioned, the available data suggest that the consensus may be correct.

The states with the lowest per capita bankruptcy filings are mainly those that either prohibit wage garnishments or severely restrict their use. The highest filings in relation to population tend to occur in states where the garnishment remedy is freely available to creditors. The following table illustrates the point and shows dramatic differences in bankruptcy rates.

TABLE 2
STATES HAVING THE HIGHEST AND LOWEST PER CAPITA BANKRUPTCY RATES, 1962[123]

State	No. of Filings per 100,000 population	State	No. of Filings per 100,000 population
Alabama	279	North Carolina	1
Oregon	200	Texas	2
Tennessee	184	South Carolina	3
Maine	153	Pennsylvania	4
Georgia	149	Maryland	5
Arizona	147	Florida	7
California	145	Delaware	10
Illinois	134	South Dakota	11
Ohio	132	New Jersey	12
Colorado	131	Alaska and the District of Columbia	13

United States as a whole: 72

Of the states in the high group only Illinois has an exemption as high as eighty-five per cent; it went into effect in 1961 and its apparent

[121] ACA BANKRUPTCY STUDY COMM. 16-17.

[122] Myers, *supra* note 115, at 11; Snedecor, *Consumer Credit and Bankruptcy*, 35 REF. J. 2 (1961). The annual report of the Bankruptcy Study Committee of the American Collectors Association, note 105 *supra*, recognizes the existence of such a consensus but dissents from it. At the same time it states that "the per capita [bankruptcy] filings in a given state partially reflect the strength of collection laws in given states" and that "strengthening collection laws in many states would increase [bankruptcy] filings." ACA BANKRUPTCY STUDY COMM. 25.

[123] Myers, *supra* note 115, at 5. See also *Hearings* App. B.

consequences will be discussed below. The states in the low group all had very high or one hundred per cent exemptions, except Maryland and in that state the use of garnishment is limited.[124]

Illinois raised its exemption from forty-five dollars a week to eighty-five per cent in 1961.[125] Between 1961 and 1964, the number of non-business bankruptcies filed in Illinois *declined* nine per cent; nationally during the same period they rose eighteen per cent.[126] The substantial change in exemption, one may infer, contributed to the stemming of the bankruptcy tide. As might be anticipated, the reduction in personal bankruptcies has not been overwhelming. As long as garnishments continue so will the threat of losing employment and the impulse to meet the threat by fleeing toward bankruptcy.

Iowa moved in the opposite direction. In 1957 it abolished its one hundred per cent wage exemption and substituted an inadequate exemption of thirty-five dollars a week plus three dollars per dependent.[127] Only 431 bankruptcy petitions of all kinds were filed in Iowa during the year ending June 30, 1957.[128] Since then bankruptcies in that state have been growing at a pace that is astonishing even for bankruptcy figures. Iowa bankruptcies more than quadrupled between 1957 and 1963, almost double the national rate.[129] During the same period California filings went from 11,629 to 27,068.[130] An increase at Iowa's rate would have brought California to over 44,000. Considering that California experi-

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124 In Maryland a creditor can only garnish wages "actually due at the date of the attachment . . . ." MD. ANN. CODE art. 9, § 31 (Supp. 1965).

125 Note 82 *supra*.

126 The year-by-year figures, as compiled from Tables F-3 of the Annual Reports of the Director of the Administrative Office of the United States Courts for the years 1961-1964 are:

Year	Illinois	U.S.
1961	16,356	131,397
1962	13,705	132,118
1963	14,057	139,176
1964	14,900	155,193

Bankruptcies have been rising in Illinois since 1962, but at a much slower rate than in the country as a whole. The ratio of Illinois nonbusiness bankruptcies to U.S. nonbusiness bankruptcies has declined steadily: 12.4% in 1961, 10.4% in 1962, 10.1% in 1963 and 9.6% in 1964.

127 See Note, *State Wage Exemption Laws and the New Iowa Statute—a Comparative Analysis*, 43 IOWA L. REV. 555, 560 (1958).

128 1957 ANNUAL REPORT Table F-2. The report does not include nonbusiness bankruptcies; hence in the discussion of Iowa, total filings are used throughout.

129 Iowa filings were 431 in 1957, 922 in 1960, 1734 in 1963; U.S. filings were 73,761, 110,034, and 155,493 in the same respective years. 1957 ANNUAL REPORT Table F-2; 1960 *Id.* at Table F-2; 1963 *Id.* at Table F-3.

130 *Ibid.*

enced a rapid population expansion during these years, the difference is striking.

It might be objected that Iowa has so few bankruptcies that a small numerical rise produces a big percentage increase and that this limits the validity of the comparison. To test this objection, Iowa might be compared with another state having few bankruptcies. Nebraska in 1957 had the same number as Iowa—431. Nebraska's increased to 953 in 1963, a "growth rate" close to that of the country as a whole and far below Iowa's.[131]

California has a per capita rate of personal bankruptcies more than five times as high as New York.[132] That again does not prove that garnishment laws account for the difference, but what does? It has been suggested by a collection agency spokesman that the large number of newcomers to the state contribute to the difference.[133] This does not rule out the role of garnishments, even if it is assumed that many of the bankrupts are recent arrivals who rush too enthusiastically to buy all the things they regard as necessary for the California way of life, or who meet economic disappointment. Recognizing that overextension of credit—to newcomers or oldtimers—may well be a key factor underlying bankruptcy, it is garnishments that often push the debtor over the edge.

Even collection agencies grant that without wage garnishments there would be fewer personal bankruptcies. They argue that this would be because then there would be no way to compel a debtor to pay his debts.[134] This contention raises the important question of the need for wage garnishments as a collection device, the question considered next.

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[131] Nebraska filings were 431 in 1957, 511 in 1960, and 953 in 1963. *Ibid.* The foregoing data may be summarized as follows: Between 1957 and 1963 bankruptcy filing in the United States as a whole increased 111%, in Nebraska 121%, in California 132% and in Iowa 302%.

[132] During the year ending June 30, 1964, New York had 5033 nonbusiness bankruptcy filings, California 29,651. 1964 ANNUAL REPORT Table F-3.

[133] *Hearings* 35 (testimony of Joseph L. Weissman, Counsel for the California Association of Collectors).

[134] ACA BANKRUPTCY STUDY COMM. 22: "Bankruptcy rates are low in states like Texas and Florida only *because there is no necessity for the debtor to file since the laws are so lax he cannot be put to more than slight inconvenience and never be legally forced to pay anyway.*" The "lax" laws are the 100% wage exemptions granted by Texas and Florida. The quoted statement is particularly enlightening in view of the publication's contention that a state's garnishment laws have nothing to do with the bankruptcy rate. See also *Hearings* 13: Raising the exemption "may lower the number of filings because there would be no reason to take bankruptcy if they cannot be forced to pay anyway. The number of bankruptcy filings would no doubt decrease in those states where garnishment laws were relaxed, but the number of people not paying their bills would actually increase." (testimony of Robert C. Kopriva, Legislative Chairman, Associated Credit Bureaus of California, quoting from an article by David Earl in the Collectogram, September 1963—the official bulletin of the Oregon Collectors Association).

D. Need for Wage Garnishments

The extensive use of wage levies in California has already been indicated.[135] It is further illustrated by an examination by the author of a sample of cases filed in the San Francisco Municipal Court. The examination consisted of reviewing the action files of one hundred cases commenced in January 1964.[136] The date was selected as one reasonably likely to reflect current practices but sufficiently remote to provide fairly complete garnishment data.[137] Municipal court actions were chosen because garnishments are most commonly and typically used in those actions.[138]

Thirty-one of these cases resulted in levies of writs of attachment or execution; there were a total of sixty-eight such levies. Of them at least forty-seven, in fifteen actions, were wage levies.[139] Garnishment is particularly common after judgment—four out of five execution levies were made against wages. Far and away the most frequent users of wage garnishments are collection agencies.

How effective are wage levies as a collection device? While a review of the case files shows what each levy caught, this does not give an accurate picture of their effectiveness. A garnishment may induce a defendant to pay off a debt or make payments on account; such payments are not always reflected in the files. The survey showed that wage levies caught something at least once in eleven of the fifteen cases in which they were used. About half the execution levies on wages were successful in that sense; they collected about one quarter of the principal indebtedness in the actions in which they were used.[140] In two of the actions the files show that wage levies satisfied the judgments in full.

Purchases on credit by consumers and hospital or medical bills are the main sources of suits that give rise to wage garnishments.[141] This

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135 Text accompanying note 1 *supra*.

136 San Francisco Munic. Ct. Action Nos. 27,363-27,462.

137 The examination was made in April 1965.

138 The Municipal Court jurisdiction extends to "all cases at law in which the demand, exclusive of interest . . . amounts to five thousand dollars ($5,000) or less . . . ." CAL. CODE CIV. PROC. § 89 (1)(a). Small claims court jurisdiction extends to actions up to $200. CAL. CODE CIV. PROC. § 117. Actions claiming $200 or less may be brought in either court. However, assignees—collection agencies—may not sue in small claims court. CAL. CODE CIV. PROC. § 117f. Section 117ha provides: "No attachment or garnishment shall issue from the small claims court, but execution may issue . . . ."

139 See Appendix B *infra*. In a few instances the files did not disclose whether the levies were on wages or other property.

140 By contrast, four out of five bank levies were successful, producing sufficient money to pay off two-thirds of the principal indebtedness in all cases where execution was levied on bank accounts.

141 The author's survey disclosed that 60% of the garnishment-producing debts resulted

leads to the contention of collection agencies that garnishments are essential to the economy. Current earnings, they argue, are often the only asset that a debtor has and that a creditor can reach. Without garnishment, the argument continues, fewer debts would be collected. This in turn, it is claimed, would lead to a tremendous drop in the granting of consumer credit, thus adversely affecting the economy as well as those families to whom credit would no longer be available.[142] A spokesman for collection agencies illustrated his viewpoint by arguing that it is much harder for a person to buy on credit in New York than it is in California.[143]

These contentions are important, if correct. However, estimates made by the collection agencies and other available data indicate that consumer credit is as readily available in New York as in California and that the extension of consumer credit is unrelated to garnishment laws. Data given a California legislative committee by the Associated Credit Bureaus of California show that in 1963, 6.621 billion dollars of installment credit was extended in California and 6.124 billion dollars in New York.[144] This amounts to 24.6 per cent of total retail sales in California during 1963 and 25.5 per cent of New York sales.[145] The Associated Credit Bureaus also covered five other states: Colorado, Texas, Florida, North Carolina, and Alabama. The ratio of installment credit to retail sales varies very little among them or, for that matter, from the ratio in New York or California.[146] This is particularly interesting because Texas,

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from purchases, 26.7% from hospital and medical services, 6.7% from loans and 6.7% from rent. Purchases included a used car, furniture, jewelry, clothing, and several items merely listed as "goods, wares and merchandise"—a catchall designation often used in complaints.

[142] *Hearings* 29-30, 37-38.

[143] *Id.* at 37.

[144] *Id.* at App. A (letter from Robert C. Kopriva, Legislative Chairman, Associated Credit Bureaus of California). These are unofficial estimates; there appear to be no official data showing retail installment credit by states. See also note 148 *infra*.

[145] In dollars the respective retail sales figures are $26.889 billion and $23.977 billion. BUREAU OF THE CENSUS, CENSUS OF BUSINESS, 1963 RETAIL TRADE, California 6-5 (1965); *Id.* at New York 34-5. The percentages given in the Kopriva letter, note 144 *supra*, are incorrectly identified as showing installment credit as a percentage of retail sales. Rather, the letter shows the ratio of installment credit in California and New York to all such credit extended in the U.S. in 1963. (California's was 10.9% of the national total; New York's, 10.1%.) In 1963, California and New York were also close in personal income, $52.419 billion and $53.120 billion, respectively; per capita personal income was $2,980 in California and $3,000 in New York. U.S. DEP'T OF COMMERCE, SURVEY OF CURRENT BUSINESS 13 (April 1964).

[146] The data for the seven states are as follows: (installment credit data from Kopriva letter, note 144 *supra*; retail sales figures from CENSUS OF BUSINESS, 1963, note 145 *supra*

Florida, and North Carolina exempt the entire earnings of a family from garnishment, while wage garnishment is freely available in Colorado and Alabama.

In short, the correlation of installment credit to retail sales does not appear to vary in accordance with garnishment laws.[147] Nor is the volume of retail sales or installment credit lower in states that do not permit garnishments, at least when measured against personal income;[148] again there is no correlation to garnishment laws.[149] Finally, it bears noting that per capita personal income does not vary in accordance with whether a state has tough or lenient garnishment laws—precisely the opposite of what might be expected if contentions that abolition of wage garnish-

at Alabama 2-5, California 6-5, Colorado 7-5, Florida 11-5, New York 34-5, North Carolina 35-5, Texas 45-5).

State	Installment Credit Extended in 1963	Retail Sales in 1963	Ratio of Installment Credit to Retail Sales
	(In billion dollars)		
Alabama	0.794	3.253	24.4
California	6.621	26.889	24.6
Colorado	0.665	2.649	25.1
Florida	1.905	7.610	25.0
New York	6.124	23.977	25.5
North Carolina	1.212	4.975	24.4
Texas	3.222	12.715	25.3

147 This is corroborated by comparing retail sales and outstanding bank consumer credit (including consumer paper bought by banks) in the ten most populous states for 1964. The ratio is 19.9% in New York, 17.1% in Pennsylvania, 14% in California, and between 13 and 15.2% in Florida, Illinois, Massachusetts, Michigan, New Jersey, Ohio, and Texas. U.S. DEP'T OF COMMERCE, MONTHLY RETAIL TRADE 9-11 (March 16, 1965). Data on bank consumer credit outstanding on June 30, 1964, by state, supplied by Federal Reserve Bank of San Francisco in a letter to author, April 20, 1965, includes bank automobile loans (plus automobile paper purchased from dealers), installment loans for purchases of other retail consumer goods (including paper bought by banks), repair and modernization loans for residences, and loans for miscellaneous personal expenditures.

148 Total personal income in the states listed in note 146 was as follows in 1963 (in billion dollars): Alabama—5.542, California—52.419, Colorado—4.678, Florida—11.933, New York—53.120, North Carolina—8.630, Texas—21.118. SURVEY OF CURRENT BUSINESS, *op. cit. supra* note 145, at 13.

149 Thus, the ratio of installment credit to total personal income is 14.3% in Alabama, 12.6% in California, 14.2% in Colorado, 16.0% in Florida, 11.5% in New York, 14.0% in North Carolina and 15.3% in Texas. The ratio of retail sales to total personal income is between 56% and 60% in Alabama, Colorado, Florida, North Carolina and Texas, and again lower in both New York and California. Ratios are computed from data in notes 146 and 148 *supra*.

ments would seriously harm the economy of the state were true.[150] For example, the Southeastern states all have per capita incomes well below the national average regardless of what their garnishment laws are. Among them Florida, which does not allow wage garnishments, happens to rank highest, while Mississippi, which not only allows them but has a low exemption, ranks lowest.[151] And each of the following pairs of states has nearly the same per capita income, but radically different garnishment laws: California and New York, Pennsylvania and Ohio, Washington and Hawaii, Vermont and Florida.[152]

There is some evidence to back one contention made by collection agencies. The percentage of recovery on accounts assigned to them tends to be lower in states where wage garnishments cannot be freely used.[153] But it is higher in New York than in California, and the correlation is far from perfect.[154] The same data strongly suggest that an exemption as high as ninety per cent would not interfere with recoveries, for not only New York but New Jersey and Nebraska have a higher percentage of recoveries than California.[155]

In any event, variations in collection agency recovery rates have no observable influence on the extension of consumer credit. There is no evidence to support a claim that wage garnishment laws contribute to the extension of credit, to the volume of retail trade, or to the level of per capita income. One probable reason for this is that wage garnishment is only one tool in a creditor's kit. It is a full kit, including prelitigation collection procedures, skip tracing, repossession of articles sold (a particularly powerful weapon for many credit sellers), attachment and execution levies against cars, bank accounts, and homes, liens of various

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[150] SURVEY OF CURRENT BUSINESS, *op. cit. supra* note 145, at 13.

[151] *Ibid.* Florida per capita income is 86% of the national average, Mississippi 56%. North Carolina (which has a 100% wage exemption) is 74%—the exact average of the Southeastern states. A state's relative prosperity obviously hinges on many factors; what the per capita income figures show is only that there is no observable relation between a state's prosperity and its garnishment laws.

[152] *Ibid.*

[153] *Hearings* App. B. (Data supplied by Associated Credit Bureaus of California; the year is not indicated and the data only cover an unknown fraction of collection agencies. Not all states are covered.)

[154] The data referred to in note 153 *supra* indicate a 36.3% recovery rate in New York as against 32.7% in California. Rates are below 20% in Arkansas (17.8%), Texas (15.2%), and North Carolina (12.3%). They are also below 20% in Missouri (16.1%) and West Virginia (18.9%) where wage garnishments are available. Missouri, West Virginia, and Alabama (21.9%) have a lower recovery rate than Pennsylvania (23.1%), a state that does not permit wage garnishments.

[155] Nebraska, 39.3%; New Jersey, 33.4%. Illinois also ranks above California in recoveries. *Hearings* App. B.

kinds, judicial examination of judgment debtors, and other tools.[156] Over the years "creditors have gained a vast arsenal of remedies."[157]

E. Garnishment and the Changing Pattern of Debt

Garnishment statutes originated in an era when consumer credit was all but unknown. Until recently, debt was something devoutly to be avoided; to "commit" debt was faintly, or not so faintly, immoral. To let creditors jeopardize a man's job by garnishing his wages is a manifestation of this attitude. The fifty per cent wage exemption is a sort of rough compromise between regarding the debtor as sinful and his family as unfortunate.[158]

The time when a family had few, if any, debts except perhaps a home purchase mortgage may be remembered nostalgically, but it has passed. The years following the end of World War II saw the development of what might be called the American way of debt. A trend toward the use of consumer credit, which started before the war, accelerated rapidly during the past two decades. To cite a few more numbers: in 1945, outstanding consumer credit totalled 5.7 billion dollars; in 1956, 42.3 billion dollars; in 1960, 56 billion dollars; and in December 1964, 76.8 billion dollars.[159] These figures do not include mortgage indebtedness. Consumer credit has become a major industry and consumer debt consumes a major slice of many a family's income. Repayment of installment debt alone equalled fourteen per cent of disposable personal income in 1964.[160] Installment credit makes up a large part, but not all, of

156 See generally CONTINUING EDUCATION OF THE BAR, CALIFORNIA REMEDIES FOR UNSECURED CREDITORS (1957).

157 Riesenfeld, *Collection of Money Judgments in American Law*, 42 IOWA L. REV. 155, 181 (1957).

158 This picture should not be drawn too broadly. Debtors, too, have had their innings in state legislatures; for instance in the enactment of anti-deficiency legislation governing mortgages. And states that have a 100% wage exemption have generally had it for a long time.

159 51 FED. RESERVE BULL. 304 (February 1965).

160 *Id.* at 306, 319.

(In billions)	Year 1962	1963	1964
Disposable personal income	384.6	402.5	431.8
Installment credit extended	55.1	60.8	66.1
Installment credit repaid	50.6	55.1	60.4

Installment credit does not include home purchase loans or noninstallment debts such as 30-day charge accounts.

If the amount of installment credit repaid is viewed in relation to compensation received by employees—a relation which may be more meaningful in case of lower and

consumer credit, which also includes charge accounts, service credit, and single payment loans.[161] Total consumer credit repayments are probably running at a level close to twenty per cent of disposable personal income and well over twenty per cent of employees' earnings.[162]

Individual debt, not so long ago discouraged and regarded with suspicion, is now encouraged. More than encouraged, debt today is merchandised as intensively and skillfully as any commodity, notwithstanding occasional pious reminders to "never borrow money needlessly." The communications media that touch a family's life constantly urge it to buy on "easy" terms, to open charge accounts with "nominal" monthly service charges, to get a new car at "bank" terms, to travel now and pay later—whether the family can afford it or not. The following report from *The Wall Street Journal* is illustrative:

> Consider the case of the 24-year-old factory worker who last week walked into Courtesy Motors, a Chicago Ford dealership, just to look around. A salesman quickly—and politely—offered to help the unshaven young man but was met with what seemed to be a definitely negative reply. He had bought a new Rambler only 10 months ago and he still owed $1,800 on it, the worker explained.
>
> But two hours later, the young man purchased a new Galaxie two-door hardtop. "I really didn't expect to get a car today," he said somewhat bewildered, "but the salesman made it easy so I figured why not." Carl Shelby, the salesman, didn't find it so easy, though. "He owed too much on the Rambler to be a good credit risk," Mr. Shelby says.
>
> The fact that the debt-laden factory worker was eventually approved points up another reason which many think plays a major role in the auto boom: Easy credit. Financing funds are so plentiful that it's a rare person who isn't able to work out some sort of installment arrangement, dealers say. Some buyers now can even get terms which allow them 42 months to pay for their new car.
>
> "There's way too much credit," remarks Kenneth Grantham, owner of Kenray Ford, a Dallas car dealership. Then he adds quickly: "But I'm not complaining." For good reason, perhaps. Mr. Grantham's sales manager, Jesse James, estimates that "90% of our customers are buying cars that they really can't afford. But credit is easy and people don't feel they're in the swing of things if they're not paying off a new car."[163]

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middle income wage earners—we find that repayments are 17% of such compensation. *Ibid.* Compensation to employees (in billions): 1962—$323.1, 1963—$340.3, 1964—$361.7.

[161] These items totaled $17.4 billion in December 1964 and together with $59.4 billion in installment credit made up the $76.8 billion figure of outstanding consumer credit. *Id.* at 304.

[162] Disposable personal income includes income from sources other than employment. Compensation to employees was $361.7 billion in 1964. *Id.* at 318.

[163] Wall Street Journal, May 14, 1965, p. 1, col. 8.

Even with sales managers named Jesse James, one may grant that the contribution of consumer credit to the economy and to the standard of living of many families is substantial. But when personal debt is no longer unusual, no longer a sign of improvidence, when debt has instead become a mass production, hard-sell item that citizens are widely encouraged to "buy," one may doubt the continued appropriateness of a device such as wage garnishment. Even when debt was a sin not all states allowed creditors to go after a man's wages. Today this harsh remedy, humiliating at best, disastrous to the debtor and his family at worst, seems far less justifiable than in an age when personal debt was uncommon and disfavored. It is time that our attitude toward wage garnishment—which is, after all, a drastic form of intervention by government on behalf of creditors—caught up with our attitude toward debt.[164]

Not all garnishments result from the purchase of goods and services on credit, but the great bulk do.[165] There are still deadbeats who merit no sympathy. Happily they appear to be few in number.[166] In any event, weapons to pursue deadbeats should not be fashioned in a way that permits injury to others.

III

CONCLUSIONS AND RECOMMENDATIONS

Garnishment is a common collection tool in California. The tool is statutory. Its main—almost its exclusive—users are collection agencies. The great majority of debts that eventually lead to garnishments arises from the purchase of goods and services. In recent decades there has been a dramatic and thoroughly promoted move toward credit buying.

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164 Along with the debt explosion there have been other changes. While in an earlier period consumer credit, such as it was, mainly took the form of credit temporarily extended by the neighborhood store at little or no interest, much of consumer credit today involves large institutions, complex terms that the debtor cannot negotiate and often does not fully understand, and high interest. Of course, not every credit transaction is of this kind. There is also a good deal of selling to poor credit risks, see text accompanying note 163 *supra*, and to persons whose credit is not checked. See, *e.g.*, FUSFELD, *op. cit. supra* note 55, at 7.

165 See note 141 *supra*. The principal service that leads to garnishment-producing debts is medical and hospital care. It might be argued that doctors and hospitals are entitled to greater consideration—better collection remedies—than sellers of goods, because of the important humanitarian nature of their service and because unlike many sellers a doctor or a hospital has nothing to repossess. It can also be argued that users of medical and hospital care are entitled to more consideration than credit buyers of many goods. Medical credit is, of course, not a new development, but even in this area the trend has been toward more formalized and institutionalized credit arrangements. Credit institutions have become an increasingly important source of medical credit.

166 The delinquency rate on installment credit is between 1 and 2% of the amount of credit extended and the net loss rate is below that by an undetermined amount. These figures appear to be national averages. Not all losses are attributable to deadbeats or "credit criminals" as the collection industry sometimes calls them. See *Hearings* App. B.

Collection agencies find wage garnishment a useful tool, not only because of the debtor's earnings actually reached by levies, but because the threat of garnishment encourages the debtor to make payments. Whether one views this effect as persuasive or coercive depends to some extent on one's point of view. In any event, the encouragement is due to the debtor's fear that he will lose his job if there are more garnishments. The fear is real. Discharges because of repeated wage levies are not uncommon. Employers dislike the added work and expense brought by levies and often limit the number of levies they will permit without discharge. Labor organizations have apparently not been able to bargain effectively on this issue.

The employee who is threatened with discharge, and who cannot pay, sometimes chooses bankruptcy as a means of saving his job. The expansion of consumer credit in the postwar years has been accompanied by a sharp rise in bankruptcies, particularly in nonbusiness bankruptcies. Bankruptcy rates tend to be lower in states that do not permit wage garnishment or that sharply restrict its use. Abolition of wage garnishment would not eliminate personal bankruptcies, but it could contribute significantly to stemming their rising tide.

Wage garnishment is costly. Its immediate costs include official fees —chargeable to debtors—expense to employers, and the community's subsidy of the garnishment process. There are other costs in terms of distress and economic hardship when the family whose earnings are garnished spirals into bankruptcy or unemployment. And there are losses to creditors from garnishment-triggered no-asset bankruptcies. Hardship is not limited to bankruptcy and unemployment; a debtor who avoids both is faced with a fifty per cent wage exemption, an amount that in the great bulk of cases is grossly inadequate.

Wage garnishment does not produce benefits to match these disadvantages. There is no evidence that the granting of credit depends on the availability of this tool. Economic data, even data supplied by collection agencies, show that the ratio of installment credit to retail trade is as high in states that do not permit garnishment as in states that do. The data show further that a state's volume of retail trade and its level of per capita income is unrelated to garnishment laws. This is not surprising in view of the creditor's full kit of tools, in which wage garnishment is only one of many. There are some data indicating that collection agencies tend to collect more of their claims in states that have wage garnishment than in states that do not. But the available information indicates more strongly that consumer credit and retail trade in a state are unrelated to these collection rates. Further, collection data show that several states

with a ninety per cent wage exemption have higher percentage recoveries by collection agencies than California.

A. Legislative Proposals for Changes in California Wage Garnishment Statutes

A number of bills designed to ameliorate the garnishment problem have been introduced in recent sessions of the California legislature.

A measure introduced in 1965 would have raised the basic exemption from fifty to eighty per cent.[167] One 1963 proposal sought to exempt all earnings from garnishment; an amended version would have provided a one hundred per cent exemption from attachment and a seventy-five per cent exemption from execution with a maximum exemption of two hundred dollars a week.[168] A second would have exempted forty dollars a week and seventy-five per cent of the balance for heads of families and ten dollars a week less for others.[169] A third aimed at a one hundred per cent exemption from attachment without changing the execution provisions.[170] This was also the objective of a fourth proposal, together with a barring of wage garnishments for two weeks after entry of judgment.[171] While these measures were not enacted, the legislature adopted a resolution calling for a study of the existing California laws exempting personal property from attachment and execution of judgment and of the changes in the state's population and credit structure which could have a bearing on revision of the law.[172] The Assembly Interim Judiciary Committee studied the subject and concluded:

> [A] revision of the law which will increase the debtor's protection by way of exemption and which will make that protection more modern and equal will be of benefit to both debtors and creditors. This conclusion reflects the underlying fact that neither debtor nor creditor

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167 Assembly Bill 2901 (1965) (introduced by Assemblyman Dymally). Two other bills were concerned only with attachment, one raising the minimum amount of a claim on which attachment can issue from $75 to $125, Assembly Bill 1127 (1965) (introduced by Assemblyman Danielson), the other requiring a second affidavit for attachment and a hearing within 72 hours to determine whether the property shall remain attached or be released, Assembly Bill 3220 (1965) (introduced by Assemblyman Chapel). A.B. 1127 was enacted. Cal. Stats. 1965, ch. 668, § 1. Neither it nor A.B. 3220 significantly affect the wage garnishment problem. A.B. 2901 and 3220 were not reported out by the committee to which they had been referred.

168 Assembly Bill 482 (1963) (introduced by Assemblyman Foran). The bill also would have provided a 50% exemption from wage levies based on alimony and child support obligations. At present there is no exemption at all in such situations. See note 20 *supra*.

169 Assembly Bill 2278 (1963) (introduced by Assemblyman Foran), later amended by the author in a manner similar to Assembly Bill 482, note 168 *supra*.

170 Assembly Bill 2332 (1963) (introduced by Assemblyman Foran).

171 Assembly Bill 2808 (1963) (introduced by Assemblyman Ferrell).

172 H. Res. 268 (1963).

benefits when the debtor is financially crippled. A more powerful exemption law will help keep the debtor from sinking further into a financial abyss and losing his job. At the same time it will protect the creditors to the extent that it allows the debtor to keep going and to avoid bankruptcy. Incidental credit grantors such as doctors, lawyers and small businessmen lose when a small loan company garnishes wages and causes the debtor to be fired or run for bankruptcy. A law with more exemption protection will encourage the commercial credit grantors to be more careful in choosing their credit risks. If the creditor will do this, he will reduce his bad debt losses. This induced care may result in some reduction of overall credit granted, but the reduction will probably be small and will be justified by the decrease in human misery caused by extreme credit problems. Finally, an exemption law can be tailored to encourage the debtor to find a program which will help him to find his way out of a bad financial situation and into a better one.[173]

The Judiciary Committee report made no specific proposals.

B. Recommendations

Wage garnishment should be abolished as a harmful and unnecessary collection device. If a more conservative approach is preferred, the exemption should be made adequate and the use of garnishment carefully restricted so as to minimize its undesirable consequences. Specifically:

(1) Wage garnishment should not be permitted prior to judgment, that is, under writs of attachment. Even collection agencies agree that garnishment before judgment is unfair.[174] How much the defendant owes and, indeed, whether he owes anything is undetermined until judgment is entered.

(2) After judgment, ninety per cent of earnings should be automatically exempt. A debtor in average circumstances needs at least that much of his wages to avoid undue hardship and to stay relatively current on his obligations. The income of debtors varies and it is tempting to scale the exemption to income (for example, one hundred per cent of the first four hundred dollars per month, ninety per cent of the next two hundred dollars and seventy-five per cent of the excess). This is not recommended because such a provision is likely to require frequent revision as the cost of living rises; without revision it will tend to give less and less protection. Also, as already noted, it is more complex to administer and can involve uncertainties of computation; the employers' interests are entitled to consideration here.

(3) The remaining ten per cent should be garnishable after judgment under the following conditions: (a) No garnishment would be permitted where the underlying indebtedness arose from installment credit, whether

[173] ASSEMBLY INTERIM COMM. ON JUDICIARY, FINAL REPORT 50 (Jan. 1965).
[174] Note 43 *supra*.

in the form of a loan or purchase.[175] It is the occasional, small creditor—if anyone—who might need the garnishment remedy. (b) Garnishment on other obligations could be had only after notice and a hearing. (c) At the hearing the court would consider the debtor's financial circumstances as well as the nature of the indebtedness involved. (d) The court would have discretion to order up to (and including) ten per cent of the defendant's earnings applied on the judgment. This would introduce a desirable measure of flexibility into the garnishment procedure. The court would retain jurisdiction and power to modify its order. (e) An execution levied against earnings pursuant to such an order would remain in effect until the judgment is paid. In other words, a single levy would suffice, thereby greatly reducing the expenses involved. Only one such execution would be allowed to be in effect at one time, otherwise the exemption could be defeated.

It is anticipated that the recommended changes would reduce the number of garnishments sufficiently so as to obviate the need for prohibiting discharges based on garnishments. However, that would be the case only if the substance of the recommendations were to be enacted. Particularly important is the proposed limitation of garnishment to obligations that do not arise from installment credit transactions. Without such a limitation garnishments are likely to continue in substantial numbers, and serious consideration of steps to provide direct protection against garnishment-caused discharge would be necessary.

(4) If it is desired, as the Judiciary Committee report suggests,[176] to help debtors work out a program of paying off their debts, provisions similar to the Ohio trusteeship statute could be enacted.[177] However, we should proceed cautiously before putting the State into the debt pooling business. The desirability of trusteeship depends at least in part on whether private facilities are adequate (and, if not, whether the development of more adequate ones can be encouraged) and whether the Bankruptcy Act's chapter 13 proceedings can be made more available to the average person in financial difficulties. It depends, too, on whether the California courts would welcome such a function—their wholehearted co-operation would be essential—and on whether society is willing to subsidize the expense of operating trusteeships to a sufficient extent to encourage its use. The answers to these questions are debatable. Trusteeship may merit further thoughtful consideration, but that should not delay moving ahead on the other recommendations.

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175 Compare the Delaware and South Carolina provisions, text accompanying notes 36, 37 *supra*. These have substantially the same effect and their wording could be adapted for California use.

176 Note 173 *supra*.

177 Note 77 *supra* and accompanying text. *But see* note 105 *supra*. As to the Michigan conciliation procedure, see note 76 *supra* and accompanying text.

APPENDIX A

AMOUNT OF WAGES EXEMPTED FROM GARNISHMENT, BY STATES

Alabama	75%[178]
Alaska	$350 (earned within 30 days) if married; $200 if single[179]
Arizona	50% (30 days)[180]
Arkansas	100% (60 days)[181]
California	50% (30 days); 100% where debt not for necessaries and needed to support debtor's family[182]
Colorado	70% for heads of families; 35% for single persons[183]
Connecticut	100% from attachment; post-judgment exemption set by court (minimum $25 per week)[184]
Delaware	90% (New Castle County); 60% (Kent and Sussex Counties)[185]
District of Columbia	90% of first $200 per month, 80% of next $300, 50% of balance[186]
Florida	100%[187]
Georgia	$3 per day plus 50% of excess[188]
Hawaii	95% of first $100 per month, 90% of next $100, 80% of balance[189]
Idaho	50%; 75% where debt not for necessaries and needed to support debtor's family (30 days); maximum exemption $100 per month[190]
Illinois	85% or $45 per week, whichever is more; maximum $200 per week[191]
Indiana	$15 per week plus 90% of excess[192]
Iowa	$35 per week for head of family plus $3 for each dependent child under 18[193]

[178] ALA. CODE tit. 7, § 630 (1960).

[179] ALASKA STAT. § 09.35.080 (1962).

[180] ARIZ. REV. STAT. ANN. §§ 12-1594, 33-1126 (1956).

[181] If the wages plus personal property owned do not exceed $500 for married residents or heads of families or $200 for single residents. ARK. CONST. art. 9, §§ 1-2; ARK. STAT. § 30.207 (1962).

[182] CAL. CODE CIV. PROC. § 690.11.

[183] COLO. REV. STAT. § 77-2-4 (1963).

[184] CONN. GEN. STAT. REV. § 52-361 (Supp. 1964).

[185] DEL. CODE ANN. tit. 10, §§ 4913(b), (c) (1953). In New Castle County, wages in excess of 90% can only be reached for necessaries. See text at note 36 *supra*.

[186] D.C. CODE ANN. § 16-572 (Supp. 1965).

[187] Limited to resident heads of families. FLA. STAT. § 222.11 (1963). A number of states limit the exemption to residents or to heads of families or to cases where there is a showing that the portion claimed exempt is necessary for the support of the debtor's family or to combinations of these factors. *E.g.*, Iowa and Kansas, notes 193, 194 *infra*. Such limitations will not generally be noted.

[188] GA. CODE ANN. § 46-208 (Supp. 1963).

[189] HAWAII REV. LAWS § 237-1 (Supp. 1963).

[190] IDAHO CODE ANN. § 11-205(7) (1947).

[191] ILL. REV. STAT. § 62-73 (1963). For garnishment procedure see, ILL. REV. STAT. § 11-21 (1963).

[192] IND. ANN. STAT. § 2-3501 (1946). *But cf.* IND. ANN. STAT. § 3-505 (1946); see Pomeroy v. Beach, 149 Ind. 511, 49 N.E. 370 (1898).

[193] IOWA CODE § 627.10 (1958). No creditor may garnish for more than $150 plus costs.

Kansas	90% (3 months); 100% from garnishment by collection agencies[194]
Kentucky	90% of first $75 per month; maximum $67.50[195]
Louisiana	80%; minimum $100 per month[196]
Maine	$30 (one month); minimum $10[197]
Maryland	75% in some counties; $100 in others[198]
Massachusetts	100% prior to judgment; $50 per week after judgment[199]
Michigan	100% prior to judgment;[200] after judgment 60% for householders having a family, 40% for others, with certain minima and maxima[201]
Minnesota	50%; 100% (30 days) where necessary for use of family[202]
Mississippi	$100 for heads of families; $50 for single persons[203]
Missouri	90% for heads of families[204]
Montana	50% (45 days); 100% where debt not for necessaries and needed for use of debtor's family[205]
Nebraska	90% for heads of families[206]
Nevada	50% (30 days); 100% where debt not for necessaries and needed for use of debtor's family[207]
New Hampshire	$20 per week[208]

194 KAN. GEN. STAT. ANN. § 60-2310 (1964).
195 KY. REV. STAT. §§ 427.010 (2), (3) (1962).
196 LA. REV. STAT. tit. 13, § 3881 (1964).
197 ME. REV. STAT. tit. 14, ch. 501 § 2602(6) (Supp. 1965).
198 MD. ANN. CODE art. 9, §§ 31, 31A, 31B; art. 83, § 8 (Supp. 1965).
199 MASS. GEN. LAWS ch. 246, §§ 28, 32 Eighth (Supp. 1964).
200 MICH. STAT. ANN. § 27A.4011(3) (1962). *But see* note 55 *supra*.
201 The Michigan wage exemption is the most complex of any state:

	Householders			Others		
	Percent Exempt	Dollars Max.	Dollars Min.	Percent Exempt	Dollars Max.	Dollars Min.
First garnishment:						
Wages for one week or less	60%	$50	$30	40%	$50	$20
Wages for more than one week	60	90	60	40	50	20
Subsequent garnishments:						
Wages for one week or less	60	30	12	30	20	10
Wages for one week to 16 days	60	60	24	30	20	10
Wages for more than 16 days	60	60	30	30	20	10

See MICH. STAT. ANN. §§ 27A.7511 (2), (3), 27A.4031 (1962). Higher amounts may be exempted by the court where the defendant is making support payments. MICH. STAT. ANN. § 27A.7511(4) (1962).
202 MINN. STAT. ANN. §§ 550.37(13), 575.05 (Supp. 1964).
203 MISS. CODE ANN. § 307 (Tenth) (Supp. 1964).
204 MO. REV. STAT. § 525.030 (1949).
205 MONT. REV. CODES ANN. § 93-5816 (1964).
206 NEB. REV. STAT. § 25-1558 (1964).
207 NEV. REV. STAT. § 21.090(h) (1963).
208 N.H. REV. STAT. ANN. § 512:21 II (Supp. 1963).

New Jersey	90%; minimum $18 per week[209]
New Mexico	75% for heads of families[210]
New York	90%[211]
North Carolina	100% (60 days) where needed for use of debtor's family[212]
North Dakota	$35 per week or, if head of family, $50 plus $5 for each dependent, but no more than $25, per week[213]
Ohio	80% of first $300 per month and 60% of balance for heads of families (minimum $150); $100 (30 days) for others[214]
Oklahoma	75% (90 days); 100% where needed to support family[215]
Oregon	$175 (30 days)[216]
Pennsylvania	100%[217]
Rhode Island	$30[218]
South Carolina	100% (60 days) where needed for use of debtor's family[219]
South Dakota	100% (60 days) where needed for use of debtor's family[220]
Tennessee	$17 per week for head of family plus $2.50 per week for each dependent under 16; $12 per week for others[221]
Texas	100%[222]
Utah	50% (30 days); minimum $50 if married or head of family[223]
Vermont	50% or $25, whichever is less[224]
Virginia	75%; minimum $100 per month, maximum $150, for heads of families; for others 50% of the above[225]

[209] N.J. REV. STAT. §§ 2A:17-56, 17-50 (1951). Where the debtor's annual income exceeds $2,500 the exemption may be reduced. N.J. REV. STAT. § 2A:17-56 (1951).

[210] 80% if the earnings for the past 30 days are less than $100. N.M. STAT. ANN. § 26-2-27 (1965).

[211] No income execution is permitted if the debtor's income is $30 a week or less. N.Y. CIV. PRAC. LAWS & RULES §§ 5231(e), 6202. See Morris Plan Industrial Bank v. Gunning, 295 N.Y. 324, 67 N.E.2d 510 (1946).

[212] N.C. GEN. STAT. § 1-362 (1953).

[213] N.D. Laws 1965, ch. 231, § 1, at 449.

[214] OHIO REV. CODE ANN. §§ 2329.66 (F), 2329.62 (C), 2329.69 (Supp. 1964).

[215] OKLA. STAT. ANN. tit. 31, §§ 1 (16) (Supp. 1964), 4 (Fifth) (1955); tit. 12, §§ 850, 851 (1960).

[216] "[E]xcept that when the debt is incurred for family expenses 50 per cent of such earnings shall be subject to such execution or other process." ORE. REV. STAT. § 23.180 (1961).

[217] 42 PA. STAT. tit. 42, § 886 (1930); see Lowe v. Jones, 414 Pa. 466, 200 A.2d 880 (1964); Right Lumber Co. v. Kretchmar, 200 Pa. Super. 335, 189 A.2d 302 (1963).

[218] R.I. GEN. LAWS ANN. § 9-26-4 (12c) (1956).

[219] S.C. CODE § 10-1731 (1962). *But see* text at note 37 *supra*.

[220] S.D. CODE § 33.2404 (Supp. 1960). Total exemption is apparently limited to $1,500.

[221] TENN. CODE ANN. §§ 26-207, 208, 209 (Supp. 1965).

[222] TEX. CONST. art. 16, § 28.

[223] UTAH CODE ANN., § 78-23-1 (7) (1953); UTAH REV. CIV. PROC. rule 64c (a) (1953).

[224] VT. STAT. ANN. tit. 12, § 3020(5) (1958).

[225] VA. CODE ANN. § 34-29 (Supp. 1964). The section adjusts the maxima and minima according to whether the debtor is paid weekly, biweekly, semimonthly or monthly. The

Washington	$35 per week and $5 for each dependent; maximum $50 per week, for persons who have families dependent on them; $25 per week for others[226]
West Virginia	80%; minimum $20 per week[227]
Wisconsin	60% (30 days) with certain minima and maxima[228]
Wyoming	50% (60 days)[229]

APPENDIX B

TYPE AND FREQUENCY OF ATTACHMENT AND EXECUTION LEVIES IN 100 MUNICIPAL COURT CASES

Thirty-one of the cases resulted in levies of writs of attachment or execution; there were attachments in 17, execution in 21. (The total exceeds 31 because in several cases there were both attachments and executions.) Altogether these cases produced a total of 68 levies, at least 47 of them wage garnishments (with respect to some levies the file did not disclose whether it was a levy on wages or other property.) The types and frequency of levies may be summarized as follows:

Type of Property Levied on	Attachment		Execution[230]		Totals
	No. of cases	No. of levies	No. of cases	No. of levies	Levies
Wages	7	8	13	39	47
Bank accounts	4	4	5	5	9
Cars or trucks	1	1	1	2	3
Other personal property and debts	1	2	0	0	2
Real property	1	1	1	1	2
Unknown	3	3	2	2	5
TOTALS	17	19	22*	49	68

* In one case there were both wage levies and a levy on realty. Hence this total exceeds by one the figure previously given.

In five cases both writs of attachment and execution were used for wage levies. Thus, the total number of cases in which wage levies pursuant to either type of writ were made is 15. The above figures are conservative since the files do not always fully reflect all writs issued and levied.

section also makes it clear the 25% which may be garnished is 25% of the wages between the minimum and the maximum; therefore, the exemption is more accurately stated as $100 per month plus 75% of the next $50. The Virginia provision illustrates the problems that arise when dollar figures are used in exemption statutes: The section was amended in 1952, 1954, 1958, and 1960 in an effort to update the minima and maxima; it is still woefully out of date.

226 WASH. REV. CODE § 7.32.280 (1964).

227 W. VA. CODE § 3834(3) (1961). West Virginia uses the term "suggest execution" for post-judgment wage levies. W. VA. CODE § 3834(1) (1961).

228 WIS. STAT. ANN. § 272.18 (15) (1958).

229 WYO. STAT. ANN. § 1-422 (1957).

230 Includes wage levies pursuant to California Code of Civil Procedure § 710, which provides a procedure similar to execution for reaching the pay of employees of the state and its political subdivisions.

(Hon. Frank Annunzio, member of the Subcommittee on Consumer Affairs, submitted the following study of credit litigation in the Circuit Court of Cook County for inclusion in the record:)

CITY OF CHICAGO,
DEPARTMENT OF LAW.

Hon. RICHARD J. DALEY,
Mayor of Chicago,
City Hall, Chicago, Ill.

Hon. JOHN S. BOYLE,
Chief Judge of the Circuit Court of Cook County,
Chicago Civic Center, Chicago, Ill.

DEAR MAYOR DALEY AND CHIEF JUDGE BOYLE: I am pleased to submit to you a study of credit litigation in the Circuit Court of Cook County. This study should be helpful in understanding current credit practices, in analysing court procedures, and in framing and evaluating proposed legislation.

I would like to thank each of you for the wonderful cooperation I have received from you in this and in other endeavors. I would also like to thank the Court personnel and Corporation Counsel Simon and his staff.

Specifically my thanks are due to the following people for their assistance in the arduous work of collecting, tabulating, and analysing the material used in this report: Allan Nathan, Ann Lousin, and La Donna Tittle.

Very truly yours,

JEROME SCHUR,
Special Assistant to Chief Judge Boyle for Consumer Credit.

A STUDY OF CONSUMER CREDIT LITIGATION

It is believed that this study is the first intensive analysis of consumer credit litigation undertaken in a major metropolitan center.

SCOPE OF STUDY

The study included every confession of judgment complaint filed in the Municipal Division of the Circuit Court of Cook County for the two week period from June 20, 1966 through July 1, 1966, inclusive. This period was chosen at random.

The total number of suits studied was 1305. This caseload is about average for the first months of 1966, since confession suits were filed at a rate of 646 per week through June 30, 1966.

In the suits studied, the total amount claimed for principal, interest, and attorney's fees was $848,338.44, of which $743,970.15 was principal.

DEFINITION OF TERMS

The suits studied were all confession of judgment suits. This means that each suit was based upon a note or contract containing a confession of judgment clause similar to the following:

> "I hereby irrevocably appoint any attorney of any court of record attorney for me and in my name from time to time to waive the issuance of process and service thereof, to waive trial by jury, to confess judgment in favor of seller his heirs or assigns, and against me for the amount which may be then due by virtue of the terms hereof together with costs and reasonable attorney's fees and to waive and release all errors which may intervene in such proceeding, hereby ratifying and confirming all that said attorney may do by virtue hereof".

Such a clause appears in almost every contract, lease or mortgage executed in Cook County. Since there is no notice of filing to the defendant, the study is based solely on the complaint and accompanying documents filed by the plaintiff. Unless there is some gross irregularity, judgment is normally entered for the plaintiff as a matter of course.

In confession suits the plaintiff is asked to state the principal amount claimed, which is the amount still owing on the debt. Interest and attorney's fees are normally provided for in the confession instrument and are often included in the judgment. Court costs are also added to the judgment, but are not itemized in the complaint and were *not* included in the study.

To compare finance charges, the standard of simple annual interest (SAI) was chosen. There are many ways of computing simple annual interest. The method used here was to compute the stated finance charge as a percentage of the principal balance unpaid at the time of the purchase. This percentage was then doubled in all cases where repayment of the amount due was to be made in equal periodic installments. For example, if $100 were borrowed and $120 were repaid in a single payment, at the end of the year this would be considered 20% simple interest. However, if $100 were borrowed to be repaid with interest in twelve monthly installments of $10 each, this would be considered double the previous amount or 40% simple interest, since the borrower does not have the use of the principal borrowed for the full year term. Where the prospective period of repayment was more or less than one year, an appropriate adjustment was made to obtain simple annual interest.

NATURE OF OBLIGATION

Here is a description of the types of transactions which gave rise to these suits:

Nature of obligation	Number of suits	Principal claimed
Used car purchase	164	$121,114.00
Radio, TV, hi-fi	117	26,199.00
Loans by loan company	103	93,884.00
Furniture and rugs	100	34,361.00
Leases	86	43,874.00
Clothing	82	9,625.00
Financing of insurance premiums	80	7,328.00
New car purchase	50	55,635.00
Attorney's fees	47	18,726.00
Business deals	46	94,829.00
Loans by credit unions	44	13,077.00
Jewelry	34	4,722.00
Loans by individuals	32	33,540.00
Real estate, improvements, and purchase	31	36,780.00
Wigs	23	3,223.00
Loans by banks	23	31,902.00
Other appliances	20	5,952.00
Health club enrollment	17	4,628.00
Medical bills	17	4,701.00
Modeling and trade school tuition	14	3,842.00
Bonds	13	3,287.00
Automobile miscellaneous (repair, loan, or accessory purchase)	13	4,008.00
Furniture covers	12	1,353.00
Employment service	9	852.00
Pots and pans	8	1,146.00
Debt consolidators	7	473.00
Whirlpool bath attachments	5	1,604.00
Musical instruments	5	3,382.00
Not identified, including refinancing of earlier transactions	87	70,215.00
Miscellaneous including utility, food freezer plan, chinaware, swimming pool, encyclopedia, coal, food, meat, department store, etc	17	8,514.00
Total	1,305	743,970.15

IDENTITY OF PLAINTIFF

The identity of the plaintiffs is shown by Table No. 1. The significance of this table relates to the legal doctrine of negotiability. Most defenses which a purchaser could raise against a suit for the price brought by the original seller (e.g. that the property purchased is defective) may not be raised against a "holder in due course" who has purchased the contract or other negotiable instrument. Legislation passed the House of Representatives in the last session of the General Assembly providing that a holder in due course would be required to notify the original purchaser before these defenses could be cut off. The study indicates that a substantial number of sellers in certain areas, e.g. clothing, do not sell their accounts to finance companies.

The study would also indicate that banks are a dominant factor in the financing of new cars and a substantial factor in the financing of used automobiles.

FINANCE CHARGES

While Illinois regulates interest payments, there is no legal limit to finance charges. Our courts have followed the "time sale price doctrine," holding that a dealer can charge any time sale price he wants, and that it need have no relation to the cash sale price. At the levels shown by Table No. 2, finance charges are probably considerably higher than most people believe. These charges were figured only in cases where a retail installment sales contract was attached to the complaint. It should be noted that many installment credit sales are made outside the purview of the Retail Installment Sales Act. (See later section on use of retail installment sales contracts).

It is noteworthy that the average finance rate for clothing and particularly for pots and pans is relatively low. The explanation for this would appear to be that the finance charge is added into the cash price. Thus, the purchaser is overcharged, but he is everpaying because of an inflated cash price. It would be fair to speculate that if finance charges are regulated by the legislature, many unscrupulous credit sellers will merely inflate the cash price to continue their present profit margin. The finance charges disclosed by these suits should be compared to the prime interest rate, the rate at which the most sought after borrower may obtain bank money. Prime rate is now approximately 6% simple annual interest.

Illinois does require disclosure of the dollar amount of finance charges in all transactions under the Retail Installment Sales Act. However, the study shows that many purchasers apparently do not shop for credit. The wide variation of finance rates imposed would seem to indicate a break down of the theoretical concept of a competitive market place. Given such a theoretical market and given a sophisticated purchaser capable of making an intelligent choice, it is difficult to see why anyone would pay some of the rates found here, such as 283%, 144%, 104%, 155%, and 135% (all for used cars).

As noted above, all finance rates are converted into simple annual interest. The most dangerous deals for the purchaser are generally the short-term deals. The highest annual percentage rates obtain where the debt is to be repaid in less than a year.

PRINCIPAL AMOUNT CLAIMED

The principal amounts claimed in the studied suits are tabulated in Table No. 3. The number of suits, 53 (6.7%) in which the principal claimed is under $50 is of significance. This indicates the ease with which creditors gain access to the courts. Since the Chicago Bar Association recommends a minimum fee of $30.00 per hour for attorneys, a suit for a sum of under $50.00 would be puzzling in any single case. However, a volume plaintiff may easily secure counsel in such cases.

On the other hand, when a defendant wishes to engage an attorney to protect himself from such a claim, he immediately finds that payment of fair legal fees for defense of the individual suit is normally not feasible since the amount in dispute is small. 65.5% of these suits were brought for a principal amount of less than $400.00. Most attorneys would either avoid getting involved in such a suit, or would be disposed to enter into a settlement, since the legal costs for a full trial would be entirely disproportionate to the dollar amount in dispute.

As a consequence, defendants are poorly represented in these suits. The cases in which there is a good defense are therefore almost never appealed, and, unfortunately, appeal is the only method of obtaining debtor-oriented case law. Knowing this, creditors tend to be aggressive, even with dubious cases, their attitude is often, "prove me wrong."

NUMBER OF SIGNERS

The use of co-signers is widespread where the seller feels that the credit standing of the principal purchaser is too poor to justify the sale. There is no legislation in Illinois to protect or warn co-signers. A creditor may proceed against a co-signer before exhausting or even attempting any remedy against the principal purchaser. Legislation to warn co-signers of their possible liability passed the House, but was defeated in the Senate during the last session of the legislature. Credit unions and automobile dealers were the chief users of co-signers, according to the results of the study. Much attention has been given to the suggestion that certain types of contracts be made unenforceable unless they are

signed by both spouses. In this connection Table No. 4 shows a significant percentage of contracts co-signed by the spouse in some areas.

INSURANCE PREMIUMS

A substantial amount of litigation is based upon contracts for the financing of automobile liability insurance. Approximately 2500 such suits were filed in the Municipal Division in 1965. During the period under study, 80 such suits were filed. The total principal claimed for the studied suits was $7,328.48. To this sum, $1,556.96 in attorney's fees and interest was added (an additional 21%).

There is no statutory regulation of the financing of automobile insurance premiums. Consequently, there are great fluctuations from suit to suit as to down payments required and finance or service charge exacted. The average finance or service charge for all such suits was 15.8%. The average charge in those suits where a finance charge was made (i. e. excluding those which did not expressly state any charge) was 32.4%. The highest finance charge made was 97% simple annual interest.

In 24 of the 80 suits a down payment was required, the average down payment being 13.8% of the cash premium. The average down payment for all suits including those where the insured merely signed a contract and did not pay anything was 4.1%.

In 28 of these suits the principal claimed was $49 or under. In 44 of these suits it was between $50 and $100.

The insurance is almost always placed with a marginal insurance company. (Generally the company is a mutual, and in the event of liquidation of the company, an assessment will be made against the insured.)

When the insured misses a payment, or when the policy is canceled for other reasons, the payment schedule is such that the insured still owes money. Then suits such as these are brought.

Because such contracts are not regulated, they are often filled out in a manner which gives the purchaser a minimum of information. For instance, 12 of the contracts did not describe the policy being purchased! 9 of the contracts had other blanks which were not filled in. Other important information which was not stated in some of the contracts was: the number of payments, the amount of each payment, the address of the purchaser (important if notice of cancellation of the insurance policy is to be given), schedule of payments, address of insurance agency-seller.

The State Director of Insurance has prepared legislation which would allow him to regulate contracts for the financing of insurance premiums. Such regulation is urgently needed. Until some governmental protection is provided, people will be buying undisclosed amounts of insurance with undisclosed insurance carriers and will be paying finance charges which range from zero to exorbitant, depending, apparently, only on how fast the salesman can talk.

NEW CARS

New and used car purchases accounted for a substantial portion of the studied litigation. Special payments were required by the seller in 14 of the 50 or 28% of the new car purchases. A special payment is one made after the down payment and in addition to the regularly scheduled monthly payments. The significance of the special payment is that the dealer is apparently dissatisfied with the amount of the down payment, but the purchaser is financially unable to increase the down payment at the time of sale; therefore, the extra or special payment is agreed upon. This puts an additional burden on the purchaser during the first month or two of the contract when the special payments are required. Many automobile contract forms have a blank for the amount and due date of these special payments.

In an automobile purchase, the Retail Installment Sales Act permits the dealer to state the combined cost of insurance and finance charges as a singled gross sum. Such contracts were segregated in our study and the costs attributable to insurance were approximated assuming the car to be an Oldsmobile or its equivalent. Taking the suits where finance charges were separately stated, the highest finance rate for a new automobile was 22.2% and the average rate was 12.6% simple annual interest. The highest rate for all suits including those where finance charges and insurance premiums were combined was 24.5% and the average was 13.1% simple annual interest. Thus, there were extreme differences between new car and used car finance rates (see below).

Th highest down payment for a new car was 27.6% of the cash price and the average down payment in suits where the information was given was 15.6%. There was no down payment in 2 of the 50 new car suits and other down payments were 4.8%, 5% and 6% of the cash price.

In 11 purchases the down payment was 10% of the cash price or less. In 22 purchases the down payment was between 10% and 20% and in the balance between 20% and 30% of the cash price.

Every new car contract ran for 36 months.

In general, contracts for new cars are carefully filled out. This may be because of the substantial value of each transaction. However, in this group 2 contracts did not state the time sale price which would constitute a violation of the Retail Installment Sales Act. One contract did not state whether the car was new or used.

In one contract $794.34 was charged for a 12 month insurance policy which is stated to include collision insurance ($100.00 deductible), credit life, and health and accident. This is apparently a gross overcharge. In another contract the charge for insurance-collision ($100.00 deductible), credit life, and health and accident—was $978.00 for three years. Thus the annual rate was $326.000 per year, a startling high rate for the protection purchased.

USED CARS

The 164 used car suits were studied as a group with no classification as to the age of the car. The highest finance rate found was 283% simple annual interest. The average was 30.7%. These figures include instances where insurance and finance charges were lumped together, but the approximate cost of the insurance was deducted before arriving at a finance rate. Taking those contracts where insurance was not included with the finance charge, the average finance rate was 27.9% simple annual interest.

In 5 of the suits, the finance charge rate exceeded 100% simple annual interest. In 24 of the suits (about 1 cut of 7) the rate was between 50 and 100%.

Of course, exorbitant finance charges are only one way of consummating an unfair transaction. In one suit an eight-year-old Mercury was sold without finance charges, but the selling price was $832.00. The actual cash value of such a car is probably nil.

Examples of other contracts where the cash sale price appeared to exceed the market value were: A five year old Chevrolet priced at $1128.25; a five year old Rambler priced at $1138.80; a seven year old Oldsmobile priced at $728.00; an eleven year old Mercury, $395.00. The highest down payment on a used car amounted to 48% of the cash price and the average for those suits where some down payment was made was 21.4%.

The principal amount claimed in the suits was compared to the original cash price of the used cars. The lowest suit was brought for 5% of the cash price, the highest was brought for 142% and the average was for 55% of the cash price. It should be borne in mind that the usual automobile suit is brought after repossession and resale of the car. Proceeds of the repossession sale are to be credited to the purchaser. However, there is no way of determining from court documents whether there was repossession or the amount realized from a repossession sale.

These figures mean that after the down payment, monthly payments, and repossession sale proceeds have been credited to the car buyer, the average buyer still owes 55% of the cash price. In other words, he has paid only the finance charges and 45% of the cash sale price.

These figures imply that the amounts realized at repossession sales are extremely slight. While a new car depreciates sharply and automatically after purchase, the same should not be true of a used car. Statistics regarding amounts realized at repossession sales, compared to original purchase price, are in the sole possession of the banks and the finance companies and are not obtainable from court files.

The contracts attached to these complaints contained a number of defects including mathematical errors; 4 of the contracts were filled out in different colored ink giving rise to the suspicion that changes were made in the contract after the purchaser signed.

A number of these contracts contained violations of the Retail Installment Sales Act: ten contained omission or misstatement of the time sale price (down

payment plus time balance); three omitted the amount of the monthly payments; three omitted the finance charges; one omitted the number of payments; and one omitted the time balance.

USE OF RETAIL INSTALLMENT SALES CONTRACTS

The Retail Installment Sales Act of 1957 provides the chief statutory protection for Illinois consumers. It is largely a disclosure act requiring the itemization of certain information such as the cash price, down payment, finance charge, time balance, etc.

The Act applies only to contracts in which the time sale price is payable in installments and in which the seller retains title to the commodity. Since both these requirements must be met in order to be subject to the Act, a seller who surrenders his full interest in title at the time of sale need not comply with the Act. Thus free from its regulations, he need not itemize the down payment, finance charge, cash price, etc., nor need he give the purchaser a completely filled-in contract or follow the other requirements of the Act such as giving a rebate of finance charges in the event of prepayment.

On the other hand, if a seller wishes to retain the right to repossession, he must retain the title. While repossession, or the threat of repossession, is often a collection tool its theoretical purpose is to provide a source of funds for repayment of the debt. Consequently, retail installment contracts would be most used in connection with the sale of "hard goods" which might be repossessed, for example, automobiles.

It is curious that 25% of the clothing sales were based on such contracts, since repossession of clothing is unlikely to yield significant income to the seller. Most clothing installment sales are made by a simple judgment note with title passing immediately to the purchaser. Such sales are then beyond the protection of the Act.

Some sellers ask the purchaser to sign both a retail installment sales contract and a judgment note. They then file suit based solely upon the note, keeping the contract in their file. Since my appointment, I have requested attorneys to attach the contract to the complaint if one was signed, so it is believed that these figures are substantially accurate. Table No. 5 describes the use of retail installment sales contracts.

INTERIM BETWEEN DATE OF CONTRACT AND DATE OF FILING

The study also examined the period of time between the date when the contract was signed and the date when the suit was filed. A summary of this information is given in Table No. 6. The twelve suits which were filed within two months after the contract was signed did seem to indicate great haste. Types of sales where the majority of suits signed were filed within one year include employment service, insurance premiums, modeling and trade schools, wigs, jewelry, furniture covers, and debt poolers.

The shortest period found between the date of the contract and the filing of suit was seven days. (One suit was brought before the first payment was due.)

MISCELLANEOUS ITEMS OF INTEREST

1. *Wigs.* As noted above, there were 23 suits based on purchases of wigs. The average price of these wigs was $166.45.

2. *Attorney's fees.* Attorneys occasionally ask a client who is unable to pay their fee in cash to sign a judgment note. There is no description of the type of legal services granted in the note, but a substantial percentage of the suits filed in this category appear to be for attorneys fees incurred in handling bankruptcies.

3. *TV.* 41 of the 117 television sets were identified in the contract as used or reconditioned. The average cash price of the used sets was $173.72. 52 of the 117 radio, TV, and hi fi suits were brought by a single seller located in the 4300 block on West Madison. This same seller is also the defendant in a suit brought by the attorney general because of over charges for TV repairs. An identification of the location of TV sellers who filed these suits discloses there were 55 in postal zone 44, 8 in (postal) zone 24, 5 in (postal) zone 12, 4 in zone 22, and 3 in zone 10.

4. *Lease With Blanks.* There were many instances of contracts or notes signed in blank, including one lease which did not state the address of the apartment to be rented.

5. *Defendants' Attorneys.* In many cases the plaintiff's attorney and the attorney who confessed judgment for the defendant have the same address and phone number. This is not clearly illegal.

RESIDENCE OF DEFENDANTS

The suits were studied to determine the residence of the defendants. This information was obtained from the contract, if stated there. If not stated there, reference was made to the summons or military affidavit. In some suits no street address was given on any of these documents. All suburban residents were arbitrarily excluded from this analysis.

For ease of analysis, the defendants were grouped according to postal zone. A map appended to this report shows the areas of concentration of these defendants. Since our concern was primarily with consumer credit, we did not consider business deals, leases, and other real estate transactions in drawing this map. The map shows a contiguous inner belt of serious credit over-extension. While some types of obligations, such as health club contracts, do not appear to follow the overall pattern, most types of obligation do.

Of the 50 postal zones in Chicago, zone number 24 had the heaviest concentration of defendants, 87, which was 10.6% of the entire total. This zone is on the West Side and was the site of some disorders this summer. Table No. 7 lists zones by the order of density of defendants.

IRREGULARITIES IN SUITS

The technical aspects of filing a confession suit were also examined with these findings:

	Number of suits
Plaintiff's Attorney:	
No signature (name typed)	314
Facsimile signature by rubber stamp	59
No address for plaintiff's attorney	6
Name of plaintiff stamped in place of plaintiff's attorney	1

There is no requirement that a complaint be signed by an attorney, but this is the usual practice in other types of cases. The failure to sign and the use of stamps perhaps indicates that in the high-volume collection practices there is an assembly line technique which stresses speed rather than exactness.

	Number of suits
Plaintiff's attorneys fees and interest:	
Interest claimed higher than allowable	5
Attorney's fees claimed in suit, but not allowed by contract	5
Attorney's fees claimed exceed court schedule of allowable fees	4
Notary (confession suits must be filed under oath):	
Not notarized	25
Not signed, but a blank line was notarized anyway	5
Stamped signature notarized	1
Miscellaneous defect	1

	Number of suits
Defendant:	
No signature by defendant's attorney	42
No address for defendant's attorney	24
Name of defendant in suit differs from signature on contract	19
Defendant sued under another name (also known as)	4
Stamped facsimile signature	10
Miscellaneous:	
Contract not assigned to plaintiff	4
No military affidavit	3
No clause allowing confession	1

These suit deficiencies should be viewed in the light of the usual confession clause under which the defendant waives and releases all errors in the proceeding. As a consequence, if the court does not discover the defect in the suit before judgment, the judgment stands. This puts a heavy burden on the court to examine carefully over 600 confession suits per week.

COMPLIANCE WITH RETAIL INSTALLMENT SALES ACT AND OTHER LAWS

The retail installment sales contracts which were attached to the complaints, were carefully scrutinized. These departures from the strict terms of the Retail Installment Sales Act of 1957 were found:

Purchased goods not clearly described	15
Principal balance not stated	8
Time balance not stated	9
Amount of each payment not stated	8
Time sale price not stated	40
Number of payments not stated	20
No blank in printed contract form for number of installments	9
Schedule of payments blank or illegible	7
Due date for first payment not stated	3
Miscellaneous defects	9

The above figures contain some duplication, but they do indicate a considerable number of contracts which disregard the Retail Installment Sales Act. That Act has both civil and criminal penalties, but its observance by many credit sellers leaves much to be desired.

Many of the contracts sued on were not within the purview of the Retail Installment Sales Act. Departures from sound business practice which may or may not affect the legality of the contract were noted. For instance, in 10 of the contracts addresses for the buyers or sellers were not stated. 8 contracts were undated. In 4 contracts the number of payments multiplied by the amount of each payment, equalled a sum in excess of the balance due. In 7 there were other mathematical errors. In 29 cases, there were blanks found in the judgment note where the suit was based upon a note rather than a retail installment contract.

There were other findings which might give rise to the suspicion that contracts were altered or alterable. In 34 cases the contract was completed in more than one color ink. In 4 cases the contract was completed with both print and script. In 26 cases, the contract was filled out in pencil.

CONCLUSION

No specific recommendations are made in this report. My purpose was to reduce to useable form some of the mass of information available from court records. In some instances merely setting forth the facts gives voice to a clear and compelling call for action. In other instances, a subsequent report will set forth my specific recommendations.

Respectfully submitted.

JEROME SCHUR,
Special Assistant to Chief Judge Boyle for Consumer Credit.

TABLE I.—IDENTITY OF PLAINTIFFS

Type of suit	Plaintiff		Bank-holder or assignee
	Original seller	Finance company—holder	
Used car	41	71	40
New car	3	18	29
Radio, TV, hi-fi	48	68	----------
Other appliances	14	6	----------
Furniture and rugs	67	27	----------
Furniture cover	10	3	----------
Clothing	73	4	----------
Jewelry	28	2	----------
Wigs	20	2	----------
Health club	17	----------	----------
Modeling school	11	2	----------
Pots and pans	7	2	----------
Insurance premiums	34	45	----------
Employment service	9	----------	----------
Debt consolidators	7	----------	----------
Total	389	256	69

TABLE 2.—FINANCE CHARGES, SIMPLE ANNUAL INTEREST RATE

Type of transaction	Highest percent-SAI	Average percent, SAI (all suits)	Average percent-SAI (only suits charging finance charges)
Used car	283.9	30.7	36.0
New car	24.5	13.1	13.1
Radio, TV, hi-fi	235.0	37.1	43.4
Furniture	105.2	23.0	30.5
Clothing	199.6	16.9	72.2
Jewelry	46.2	11.5	28.0
Wigs	38.4	8.7	33.6
Other appliances	57.6	26.0	26.0
Furniture covers	50.0	31.2	41.6
Pots and pans	25.6	4.8	19.5

TABLE 3.—PRINCIPAL AMOUNTS CLAIMED IN SUITS, NUMBER OF SUITS BY DOLLAR AMOUNT CLAIMED

Type of suit	$0 to $49	$50 to $99	$100 to $199	$200 to $299	$300 to $399	$400 to $499	$500 to $749	$750 to $999	$1,000 to $1,499	$1,500 to $1,999	$2,000 to $2,999	$3,000 and over	Total
New car	0	0	0	3	1	0	10	10	17	6	2	1	--------
Used car	0	5	15	13	14	20	32	22	27	6	5	2	--------
Furniture and rugs	8	10	22	17	14	8	10	4	2	0	0	1	--------
Furniture cover	2	6	3	0	1	0	0	0	0	0	0	0	--------
Radio, TV, hi-fi	7	20	44	25	10	4	1	5	0	1	0	0	--------
Other appliances	1	3	4	5	3	2	0	1	1	0	0	0	--------
Clothing	10	33	25	9	3	0	0	0	0	0	0	0	--------
Jewelry	5	9	13	2	1	0	0	0	0	0	0	0	--------
Wigs	1	4	17	0	0	0	0	0	0	0	0	0	--------
Pots and pans	2	1	3	1	1	0	0	0	0	0	0	0	--------
Loan by loan company	1	6	14	17	12	10	16	12	4	0	1	10	--------
Loan by credit union	11	9	11	3	2	2	1	0	2	2	0	0	--------
Loan by bank	0	1	2	2	0	1	3	4	5	2	0	3	--------
Health club	0	1	2	5	8	1	0	0	0	0	0	0	--------
Model and trade school	0	1	4	2	3	2	0	1	0	0	0	0	--------
Employment service	2	4	2	1	0	0	0	0	0	0	0	0	--------
Debt consolidators	3	3	1	0	0	0	0	0	0	0	0	0	--------
Totals	53	116	182	105	58	50	63	59	58	17	8	17	786
Percentages	6.7	14.8	23.2	13.4	7.4	6.4	8	7.5	7.4	2.2	1	2.2	100

TABLE 4.—NUMBER OF SIGNERS ON CONTRACT

Type of suit	Number of signers							
	1	2	3	4	Spouse	Percent with cosigner other than spouse	Percent cosigned by spouse	Order by percent of contracts cosigned by spouse
Used car	109	16	4	3	32	14.0	19.5	8
New car	35	1	2	2	10	10.0	20.0	7
Radio, TV, hi-fi	95	5	---	---	15	4.3	13.0	10
Furniture	56	8	---	---	32	8.3	33.3	4
Clothing	70	5	---	---	---	6.5	2.6	11
Jewelry	27	3	---	---	2	10.0	0	13
Loan by loan company	44	5	2	---	48	7.1	48.5	2
Loan by credit union	34	5	3	---	1	18.6	2.3	12
Loan by bank	11	1	---	---	11	4.3	47.8	3
Other appliances	15	1	---	---	4	5.0	20.0	6
Pots and pans	3	---	---	---	5	0	62.5	1
Furniture covers	9	---	---	---	3	0	25.0	5
Wigs	19	---	---	---	3	0	13.6	9

TABLE 5.—USE OF RETAIL INSTALLMENT SALES CONTRACTS

	Number using contract	Number not using contract	Percent using contract
New car	48	2	96.0
Radio, TV, hi-fi	111	4	96.5
Furniture	78	18	81.3
Clothing	19	57	25.0
Jewelry	16	14	53.3
Wigs	10	12	45.5
Other appliances	19	1	95.0
Used car	133	17	88.7
Furniture covers	9	3	75.0
Pots and pans	7	1	87.5

Note: Cases considered to be using contracts include instances where both a contract and a separable note were used

TABLE 6.—INTERIM BETWEEN DATE OF CONTRACT AND DATE SUIT FILED BY NUMBER OF MONTHS

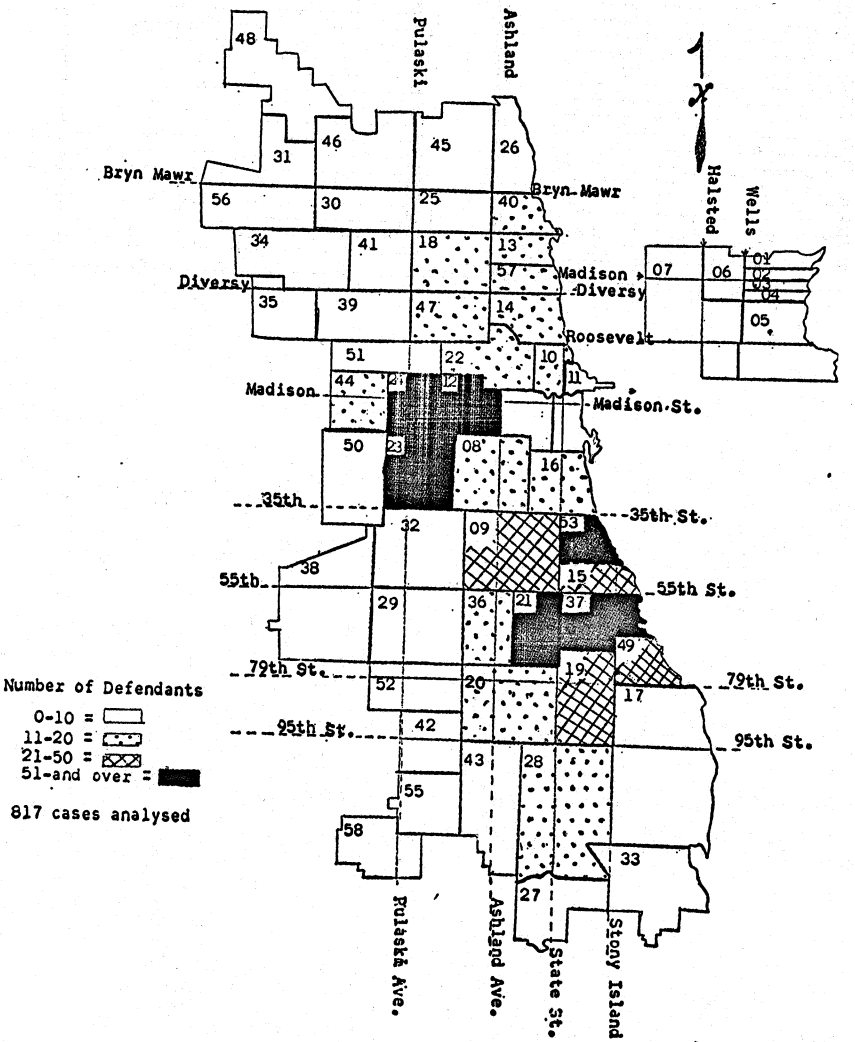
Type of suit	Number of suits					
	Less than 2	2 to 6	7 to 12	13 to 24	25 to 36	37
New car	0	3	13	21	6	6
Used car	1	23	37	53	22	24
Furniture and rugs	1	6	24	22	22	22
Furniture covers	0	7	1	4	10	0
Radio, TV, hi fi	1	13	28	33	15	21
Other appliances	0	2	6	8	2	1
Clothing	2	15	13	26	2	15
Jewelry	0	10	10	8	3	3
Wigs	0	2	12	9	0	0
Pots and pans	0	2	2	3	2	0
Loan by loan company	1	4	25	20	19	33
Loan by credit union	0	4	16	9	5	8
Loan by bank	1	1	9	6	1	4
Health club	0	2	7	8	0	0
Model and trade school	3	4	6	1	0	0
Employment service	0	5	3	0	1	0
Debt poolers	0	0	4	3	0	0
Insurance premium	2	29	41	4	1	1

TABLE 7.—POSTAL ZONES IN ORDER OF CONCENTRATION OF DEFENDANTS

Postal zone	Number of resident defendants	Postal zone	Number of resident defendants
24	90	32	12
23	78	16	11
37	76	26	10
53	57	43	10
12	55	51	9
21	54	45	9
15	37	17	8
19	36	29	8
49	27	39	7
22	24	34	7
9	23	30	7
20	21	27	6
47	21	41	6
10	20	38	4
40	19	56	3
8	18	11	3
36	17	6	2
57	16	46	2
13	15	52	2
14	15	55	2
28	15	58	1
18	13	50	1
25	12	35	1
44	12	2	1

RESIDENCE OF CONSUMER CREDIT DEFENDANTS BY POSTAL ZONE

(All suits except leases, business deals, and real estate transactions)



(Hon. Abraham J. Multer, ranking member of the Committee on Banking and Currency and sponsor of H.R. 11806, submitted the following article from the September 1967 issue of Consumer Reports magazine, published by Consumers Union, Inc., for inclusion in the record of the hearings.)

[From Consumer Reports, Mount Vernon, N.Y., September 1967]

THE BIG HOLE IN TRUTH-IN-LENDING

The bill passed by the Senate would allow comparative costs of revolving credit to remain obscure; other weaknesses in the bill are small by comparison

Senate passage of the Truth-in-Lending Bill last July represented a 92-to-0 vote of confidence in the ability of consumers to shop wisely for credit when given the essential facts. Those facts concern the true price of money, whether borrowed directly from a lending institution or indirectly through the purchase of goods and services on the installment plan.

Except in the realm of consumer credit, the price of money is everywhere expressed as an annual interest rate—the percent of principal the borrower must pay for a year's use of someone else's money. Truth-in-Lending legislation would simply give consumers the same information that has always formed the basis for nonconsumer borrowing. For the first time in the history of this buy-now-pay-later economy, consumers would be able to make accurate price comparisons in shopping for most types of credit. The one major exception—and it could easily become a gaping hole in the dike—is revolving credit.

THE RELATIVE TRUTH

The marked differential between the true annual interest rate and the actual number of dollars charged per $100 of initial installment credit has long been a source of hopeless confusion. A "price" of $6 for $100 of credit, to be repaid in 12 monthly installments, is not equivalent to an annual interest rate of 6%. It *would* be 6% if you kept the whole $100 for a full year and repaid it in one lump sum. But you usually repay it in regular installments, and thereby lose the use of a progressively larger fraction of $100 during the year.

The true annual installment interest rate is thus usually about twice the dollars-per-hundred figure. If you borrow $100 for one year and pay back $106 in equal monthly installments, the true annual rate is not 6% but 10.9%. If you borrow $100, immediately pay $6 interest, and pay off $100 in one year's installations, the rate is 11.6%.

Defining the annual interest rate on consumer credit is the Senate's major contribution to truth in lending. Truth, in lending as in everything else, is relative, and writing the definition of true annual interest has not been an easy exercise in standards-making. Several different ways of calculating installment interest rates have been in common use. Each produces a somewhat different rate from the same set of terms, because each makes a different assumption about how the interest is being paid. For example, does all the interest come out of the first payment? Does it all come out of the final payment? Is it divided equally among all payments? Is it a decreasing portion of each payment?

In recent editions of the Buying Guide Issue of CONSUMER REPORTS, we have published an equation for calculating annual interest. It is based on the constant-ratio method—each payment is assumed to consist of a fixed portion of interest and principal, equaling the total of each divided by the number of installments. Most credit sellers, it turns out, use another method giving slightly different rates. It is a decreasing-interest method, which applies the interest rate each month to the unpaid balance. This method has been explained simply and clearly in the "Financial Rate Translater," a publication of rate tables for use by the credit industry:

"Traditionally the return on money invested is stated as an annual interest rate on the funds actually in use. For monthly payment loans the interest rate per month is 1/12 of the annual interest rate. In these tables we shall call this *annual* interest rate the *actuarial* rate. It is exactly the same rate you talk about for a G.I. mortgage, or an FHA mortgage or any other direct reduction loan. *The actuarial rate expresses the true return on an investment; any other is at best an approximation.*"

The last sentence, which we have emphasized, tells the story. From the consumer's view, the lender's true (gross) return equals the true annual interest rate.

The Senate has taken its definition straight from the horse's mouth. Its draft of the bill calls for use of the actuarial method, and would instruct the Federal Reserve Board to describe methods for computing actuarial interest rates for almost any conceivable installment credit arrangement now in common use. Credit contracts would have to state, additionally, the rest of the payment terms: the purchase price, the size of the down payment, the balance to be financed as a loan, the number, size and frequency of payments and the total finance charge. Some states already require disclosure of some or all of those items. Only one, Massachusetts, requires disclosure of the annual interest rate (as figured by the constant-ratio method).

There is every indication that the House of Representatives will also pass a Truth-in-Lending Bill this session. House hearings were scheduled for August on a bill much more sweeping in scope than the Senate's. President Johnson will almost certainly sign the bill that emerges from Congress. He has put the full force of his influence behind compulsory disclosure of true annual interest.

LEGISLATIVE PURPOSE

The strengths and weaknesses of the bill as it shapes up thus far can be properly understood only in terms of the purposes underlying it. To be sure, politicians are as much in favor of truth as they are against sin. But truth as such is not the basic objective. Behind the progress of the Truth-in-Lending Bill is a vital need for marketing tools to help stabilize a most turbulent sector of the national economy.

Total short-term consumer debt has been growing at a furious pace. In the past 15 years, it has quadrupled to a present level of around $95 billion. About $75 billion is installment debt, on which repayments last year were $73 billion. By comparison, total personal income has only a little more than doubled in the same 15 years, and now stands at about $505 billion, after taxes. Plain arithmetic thus says that about every seventh dollar in the average pay envelope is spent before it's earned.

And plain arithmetic understates the case. You must add interest charges of about $12.5 billion per year. You must also take into account that only about half of the nation's wage earners have short-term installment debts. Installment debt alone, plus its interest, is generally estimated as laying prior claim to one dollar of every four in an *average debtor's* pay.

Some economists fear that, with so large a part of future income committed in advance, any serious rise in unemployment or drop in wages would snowball into a major recession. For many people would have all they could do to make their payments; they would be in no position to increase their debts, and their cash buying power would be harshly curtailed. Nevertheless, the present long-term economic boom has been stimulated by the huge and expanding wave of consumer credit. It is therefore understandable that nobody in the Government has come out against the fast-growing consumer installment debt as such.

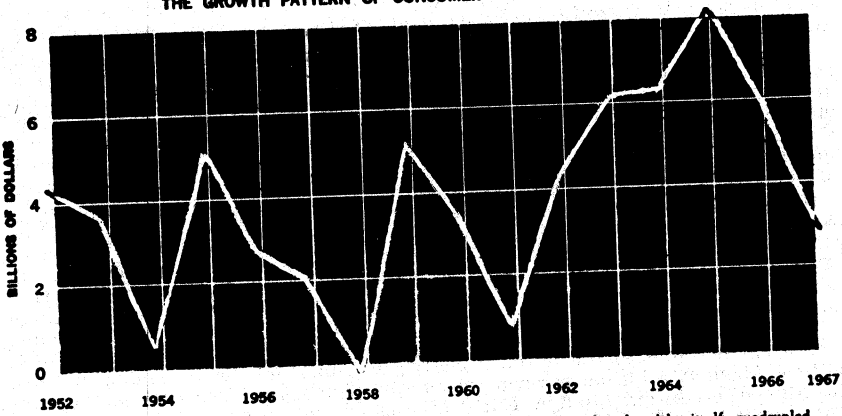
It's the turbulent fluctuations in credit expansion that cause official concern. Like Robert Louis Stevenson's little shadow, the rate of increase in consumer credit sometimes shoots up taller like an India-rubber ball, and sometimes gets so little that there's none of it at all. The pattern of sharp rises and falls over the past 15 years is shown in the graph below. It traces three periods of extraordinary credit growth. After the first two peaks, in 1955 and 1959, the rate of borrowing fell to around the break-even point, where, over a year's time, the total of new borrowing very nearly equaled the total of repayments.

Do purchasing *intentions* normally fluctuate so wildly? Or does some outside force radically change them?

Looking back from the vantage point of the recession year 1958, CU saw signs of the lender's hand at work. "Seven million high-priced autos were moved out of dealers' inventories [in 1955] in one of the biggest sales blitzes of all time," we noted, "and some 60% or better of those cars were sold on the cuff. Moreover, one of the tools of the blitz was an extension of installment contracts to 36 months. Other sellers, competing with autos for their share of the consumer dollars, also offered terms of nothing down and 36 months to pay for rugs, furniture, etc.

The chief symptom of recession is a slackening of economic growth. Thus, in 1958 there was no increase in the Gross National Product. Credit expansion hit another new high in 1959, followed by almost no credit expansion in 1961.

THE GROWTH PATTERN OF CONSUMER INSTALLMENT DEBT



Wild waves of growth on the rising sea of installment debt have been economic storm signals. The graph line traces only the growth: the debt itself quadrupled from $18.7 billion in 1952 to $74.6 billion in 1966

Again, the trough on the graph was accompanied by a sharp tapering off of economic growth. To put it mildly, more orderly use of credit might have a less unsettling effect on the general economy.

The Senate Truth-in-Lending Bill makes no bones about it. The first-mentioned purpose of the bill is "economic stabilization." Underlying full disclosure of credit costs is a two-part theory to which CU has long subscribed. First, disclosure of true annual interest rates will make people more sensitive to the high price they pay for most installment loans. When 800 CU members reported a few years ago to the National Bureau of Economic Research on recent credit deals, only a minority of them said they had an idea of the interest rate they had paid. Within that minority, the average rate they *thought* they had paid was about 8%. The rate they had actually paid averaged about 23% (CONSUMER REPORTS, October 1964).

The second part of the theory holds that people who are conscious of the price of credit will shop, compare and buy that credit at as low a rate as they can find. Again, the data obtained from CU members accords with the theory. Those who were able to report the true rate of interest on their loans paid an average, for loans of under $500, of about 12%. Those who had no idea of the rate paid a startling average of about 37%.

In its report on the Truth-in-Lending Bill, the Senate Banking and Currency Committee took cognizance of that and other evidence. The Senate's vote of confidence in the consumer says, in so many words, "Here is the information you need. Now don't make waves."

SPECIAL TREATMENT FOR REVOLVING CREDIT

The Senate bill falls short, however, of requiring all the information consumers will need if they are to compare credit costs. That is not surprising, considering the tortuous course of the legislation. Senator William Proxmire, the bill's chief sponsor, succeeded in getting a bill to a vote—where his predecessor, former Senator Paul H. Douglas, had failed—partly because Senator Proxmire was prepared to compromise. When it became quite evident early this year that some kind of Truth-in-Lending Bill would be passed, one of its old-line opponents, The National Retail Merchants Association, sent out this advisory to its members: "With . . . the prospect of more intensive pressures for credit controls during 1967, it is becoming increasingly evident that flat opposition to credit legislation may be doomed to failure. *A wiser course might be to work for legislation and regulations that can be lived with.*" (Italics supplied by the NRMA.)

At Senate hearings last spring, witnesses for the NRMA and a number of other strong opponents of the bill concentrated their fire on one provision in particular. They sought to knock out any requirement for annual rate disclosure on revolving credit charge accounts. And they largely succeeded. Under the Senate bill, revolving credit as applied to most department store accounts and most of the new wave of revolving bank credit cards would continue to be labeled, as it usually is now, with a deceptively low monthly percentage figure.

Revolving credit is one kind of consumer credit most people are familiar with, whether or not they make a practice of buying on time. People who buy at all regularly in most department stores or from big mail order houses usually open charge accounts. It's convenient to pay the bill once a month, and, besides, there's usually no credit charge if you pay the bill within 30 days. Every customer, whether he pays cash over the counter or says charge it, foots the costs of 30-day credit as part of the overhead built into the price of the goods.

Of course, most stores offer a choice of paying in full or making a payment of, usually, 10% per month. It's what's called a "line of credit" or an "open-end" credit account. Each new purchase is added to the bill, and 10% of the total balance at the end of each billing period is all you have to pay ad infinitum—all, that is, except for a "small" monthly service charge. Many states set a service charge ceiling of 1½% per month, and stores almost invariably charge the maximum. A rate of 1½% a month equals an annual interest rate of 1½ times 12, or 18%.

The balance due on the nation's charge accounts has been running at $10.5 billion. About $3.5 billion is revolving credit. That's not much next to the total installment credit outstanding. But it is probably not an accurate figure at present, and it certainly won't be an accurate one in the future, because it omits, among other things, the revolving credit schemes now being heavily merchandised by banks. Until last year, bank revolving credit was probably not a major factor, although it has been on the scene at least since 1950. But in only the past year or two, according to the Federal Reserve Board, the number of banks issuing credit cards or operating open-end check credit plans reached 627, plus several hundred local banks acting as agents for large city banks' credit plans.

"The enthutiasm with which the supposedly conservative banking profession has greeted this relatively new consumer service is unparalleled in the pages of modern banking history," the American Bankers Association was told by a Chicago banker. And he explained why: "We are beginning with this first step to recapture a larger share of the credit business which heretofore conceivably could have fallen into nonbanking hands by default."

The bank credit card, unlike the department store card, can be used to charge purchases at many different stores—as many as can be recruited by the sponsoring bank. It is the poor man's version of the American Express or Diners' Club card. As *The Wall Street Journal* has reported, "Bank cards are issued largely to lower-income consumers . . ."

A number of Midwest banks, operating jointly, "mailed mounds of credit cards unsolicited to each other's customers and former customers, some 4 million families in all," the *Journal* said. C. A. Agemian, vice president of the Chase Manhattan Bank, told why in a recent speech:

"If you want to get cardholders, your card has to have value. The cardholder needs stores to use it at. If you want to attract merchants, you have to be able to show or promise them a healthy looking number of cardholding shoppers. What comes first, the chicken or the egg? To choke off competition, you must flood the market with cards. Everybody gets cards from every bank he does or does not do business with. People who may have a capacity to repay $500 may have received cards from various banks that could permit them to charge up to $3000 or $4000!"

Were the final Truth-in-Lending law to exempt bank, department store and mail-order charge accounts from annual rate disclosure, it would quite obviously withhold from the consumer an important tool he needs to shop wisely for credit. Yet the Senate bill exempts those accounts, in most instances.

If the exemption is allowed to stand, only the monthly rate will be disclosed on most revolving credit deals. To compare the price of revolving credit with that of other forms of credit you would have to convert the monthly rate to an annual rate by multiplying it by 12. Many people don't know that, however, and they might assume that a 1½% service charge is lower than, say, the 12% annual rate generally charged by credit unions. There is thus some likelihood that the exemption would help accelerate the growth of revolving credit.

To escape annual rate disclosure for revolving credit, merchants and bankers used a shrewd argument on the Senate subcommittee considering Truth-in-Lending. A charge account customer, they said, often gets the use of their money at 1½% for more than one month. Someone who buys something shortly after his monthly bill has been made out, for instance, would have as long as 59 days of free time before incurring a service charge, because he would not receive his next bill, with the new item posted on it, for up to 29 days and would have 30 additional days after that to pay it. Therefore, the argument goes, a 1½% service charge does not accurately translate as 18% per annum and is usually lower.

The argument has a cute premise: Up to 59 days of credit time are available interest-free, but only on condition that the bill is paid in full on the 59th day. (In practice, you'd better pay it sooner or it might not be credited to your account in time to escape interest.) If you don't pay in full, time runs backward to the date of purchase.

Well, maybe an accountant can really make the calendar run in reverse. But one name for that sort of magic is account juggling.

The only reason for mentioning it here is that there are many different sets of rules for juggling revolving credit. Different stores use different rules, and they are not just playing games. A revolving charge account can cost considerably more at one store or bank than another, though both seem to be charging 18% annual interest.

Professor Richard L. D. Morse of Kansas State University has illustrated the situation dramatically in a recent pamphlet (see page 473). He demonstrates six different revolving credit billing systems, all of them examples of systems in use, and he showed how service charges can run more than twice as high in some stores as in others.

The drafters of the Senate Truth-in-Lending Bill recognized this obstacle to credit price comparisons. Their solution is to require each revolving credit contract and monthly statement to explain its billing system. The Federal Reserve Board, which will have to write the necessary regulations, has its work cut out. Here are excerpts from the contract applications of three mail-order houses explaining their billing systems:

Sears, Roebeck and Co.: "an amount of time price differential computed at 1½% of the balance at the beginning of each month billing period until the full amount of all purchases and time price differentials thereon are paid in full."

Montgomery Ward: "a time price differential or service charge of 1½% per month on the opening monthly balance of my account on amounts up to $500 and 1% per month on amounts in excess of $500."

J. C. Penney Co.: "a time price differential ('service charge') computed by applying the rate of 1½% to the unpaid balance of the cash sale price and any unpaid service charge on each of my monthly billing dates (pursuant to your then current billing schedule) commencing with the second monthly billing date following the date of purchase . . ."

If you knew as much about the subject as Professor Morse, you might be able to figure out (but not from statements like these) that a certain six-month series of transactions costing $2.28 in service charges at Penneys could cost $2.74 at Sears or Wards and upwards of $5 at some other stores. Most people wouldn't get the message right away. A number of them, including a professor of economics and a professor of philosophy, have written to us within the past year or so. One person wrote: "I hate to admit after many years of using my Sears account that I was never aware of paying such a high rate of interest."

The point, of course, is that hardly anyone can fathom the billing methods of revolving charge accounts. Help is needed, and the need will become more and more pressing as banks and stores, spurred on by the availability of computerized billing systems, contend for revolving credit business. As this is written, time remains for the House Banking and Currency Committee to rectify the situation.

The House bill, sponsored by Rep. Leonor K. Sullivan, would put revolving credit back under full-disclosure provisions. With slight amending, it could assign the Federal Reserve Board to tackle the billing problem.

OTHER LOOPHOLES

The Sullivan bill seeks to close other loopholes in the Senate bill as well, for revolving credit exemption is not its only weak spot. Some others are worth noting here.

First mortgages on houses are exempt from disclosure regulations. It is true that mortgage interest is already stated as a true annual rate. But certain fees are usually left out of the rate picture—such as mortgage placement and appraisal fees, credit report fees and points, or discounts, paid by the purchaser. According to recent figures from the Federal Home Loan Bank Board, just the placement fees and points on conventional new-home mortgages are now averaging almost 1% of the amount of the loan. In effect, the interest rate is higher than you think. It should be fully disclosed.

Premiums for credit life insurance would not be considered as finance charges or included in the annual interest rate. Yet many lenders and credit merchants require you to buy insurance for *their* protection. Unless the option to buy is the borrower's, credit life insurance premiums should be counted as part of the interest rate.

Insurance commissions earned by used car dealers when they sell an accident policy as part of the credit package on a car sale would not be counted in the interest rate. Some dealers have close ties with insurance agencies and pad the price of car financing with overpriced premiums. If accident insurance is part of a car deal, the dealer's take should be included in the interest rate.

There is no regulation of credit advertising. Familiar and phony slogans like "low bank rates" and "no money down—easy monthly payments" would continue to gull the unwary. Massachusetts law requires credit merchants to post the true annual rate in any advertisement making reference to credit terms. Federal law should follow suit.

If the finance charge is $10 or less, the lender doesn't have to disclose his annual interest rate. Example: A vacuum cleaner salesman knocks on the door with an offer of an $80 machine for $10 down and 12 monthly payments of $6.65. The payments total $89.80. The finance charge is $9.80 for $70 of one-year installment credit. The well-concealed true annual interest is 25%. Truth-in-Lending should apply to small deals as well as big ones.

The Senate bill would not go into effect until July 1, 1969. There is no reason, according to testimony at the Senate hearings, why the effective date could not be set for one year after enactment.

Credit sellers could fudge their rate disclosure by stating it as dollars per hundred rather than as a percentage until January 1, 1972.

Confidence in the consumer will be rewarded best if he is given a good yardstick, if *all* credit sellers must adhere to its standard of measurement, and if the standard is invoked as soon as possible. This requires a Federal Truth-in-Lending Bill without holes.

A DIZZYING LOOK AT REVOLVING CREDIT

Service charges on revolving credit accounts vary widely from store to store and from bank to bank, even though the stated interest rate is usually the same. The explanation for this apparent contradiction is fairly simple. The service charge is the product of the balance due times the monthly interest rate. But different department stores, mail-order houses and credit-card banks have different methods of determining the part of your monthly balance against which a service charge is assessed.

A recent survey conducted by Richard L. D. Morse, professor of family economics at Kansas State University, makes two things quite clear. First, it is next to impossible to tell which revolving credit account offers the best deal. "Methods of figuring service charges were too complex not only for the local management to understand and relay to customers who wanted to know how it would work in practice, but for national [store chain] offices to interpret in terms of an annual percentage rate of service charge," Professor Morse wrote.

Second, store-to-store differences in credit costs can be quite significant. The Morse survey isolated six billing methods, each arriving at a different total of service charges for a given series of hypothetical transactions. The customer

began with a clean slat—no balance due—on the first of the year. He then did business with the store as follows:

	Purchases	Returns	Payments
January	$30	$10	----------
February	120	30	$20
March	90	40	80
April	10	----------	10
May	10	----------	10
June	10	----------	10

Here, from lowest to highest, is the total of service charges, at 1½% per month, depending on which of the six billing methods is applied:

Method: Option to pay in full within 30 days of the billing date without incurring any service charge. Interest rate is applied to the previous month's closing balance, less any payment and returns. Total service charge—$2.28.

Method: Same as preceding except returns are credited before the interest rate is applied. Total service charge—$2.43.

Method: Same is preceding except neither returns nor a payment is credited before interest rate is applied, unless the total of returns and payment equals or is higher than the previous month's closing balance. Total service charge—$2.74.

Method: Same as preceding except returns are never credited to the previous month's closing balance. Total service charge—$4.16.

Method: No 30-day option to pay in full without incurring a service charge. Interest rate is applied to the previous month's closing balance. Total service charge—$4.47.

Method: Same as preceding, except interest rate is applied to the balance at the end of the current month. Total service charge—$5.44.

Although typical, the six billing methods by no means exhaust the possibilities. And all variations, with the possible exception of return credits, are open to bank revolving credit plans. Obviously, you can't make the most economic use of a charge account unless you understand its billing system thoroughly. But, as Professor Morse found, the essential facts cannot readily be obtained.

A more complete summary of the Morse survey is found in a pamphlet called "Truth in Lending," available from the Council on Consumer Information, 15 Gwynn Hall, University of Missouri, Columbia, Mo. 65201.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., August 24, 1967.

Hon. LEONOR K. SULLIVAN,
Chairman, Consumer Affairs Subcommittee, House Banking and Currency Committee, Rayburn House Office Building, Washington, D.C.

Dear MRS. SULLIVAN: Please find enclosed copies of correspondence concerning a New Jersey family who have become involved with a debt-pooling outfit operating out of the States of Rhode Island and Nevada.

It appears to me that the facts alleged in the correspondence demonstrate the need for Title III of our bill, H.R. 11601, calling for the establishment of a bipartisan National Commission on Consumer Finance. The information developed by the proposed commission could provide the Congress with facts it needs to evaluate the effectiveness of existing State regulation of this type of consumer finance operation.

I will be most appreciative if this letter, as well as the attached correspondence, is incorporated in the Subcommittee's hearings on H.R. 11601, the Consumer Credit Protection Act.

Sincerely yours,

JOSEPH G. MINISH,
Member of Congress.

NEW JERSEY STATE AFL–CIO,
Newark, N.J., August 16, 1967.

Hon. JOSEPH G. MINISH,
House of Representatives,
Washington, D.C.

DEAR JOE: In connection with the bill that you have introduced to prevent frauds may I provide you with the following information which I am sure will assist you.

Mr. and Mrs. Anthony Catananzi of 93 Tennyson Street, Carteret, New Jersey saw an advertisement in "True Confessions" magazine, a copy of which appears on Page 78 of the September, 1967 issue of that magazine. I am enclosing two copies of it herewith. Mr. and Mrs. Catananzi being harassed by a number of debts, contacted Automatic Acceptance, Inc. and received in the mail a form of contract by which they agree to pay $25 a week and the Automatic Acceptance, Inc. would pay their bills and charge them an alleged 6% interest.

As required by the contract, they sent all their bills including their payment receipt books, to Automatic Acceptance, and at present do not have copies, and cannot figure the total amount of the bills. The only record they have is the receipt card referred to below. It seems obvious to me, however, that the amounts payable cannot possibly be met by payments of only $25.00 a week. This is evidenced by the fact that one creditor alone, the Queens City Finance Co., has a claim of $23 a month.

They thereupon started paying the $25 and have paid $100 to date. Notwithstanding this, Mr. Catananzi's employer has just been served with a garnishment notice from Queens City Finance Co. as a result of which Mr. Catananzi has been released from his employment.

When Catananzi was told he was released from employment because of the garnishment, which amounts to $23, he telephoned Automatic Acceptance. They refused to do anything or give him any information. They simply repeated several times, "We can't do anything about it."

Automatic Acceptance, Inc. has already received $100 from the Catananzis. I am enclosing herewith copy of letter from that company dated July 26 and also copy of receipt card showing the payment of $100.

I am sure that if you investigated this you would find that the charges instead of being 6% are substantially higher and you would probably find that very little of the money already received has been paid out by the company against Catananzis' bills.

It seems to me that this will serve as a rich source of investigation and would substantially help in the passage of your bill.

With best regards, I am

Sincerely yours,

VINCENT J. MURPHY,
President.

AUTOMATIC ACCEPTANCE, INC.,
NATIONWIDE SERVICE,
Providence, R.I., July 26, 1967.

ANTHONY CATANANZI,
Carteret, N.J.

DEAR MR. CATANANZI: In reference to your recent letter, please be advised that on July 6, 1967 you engaged my company to handle your bills on a budget basis; at which time, you agreed to pay this company $25.00 each and every week. In turn, we would handle all of the bills that you had listed on your application, based of course on the money that we received from you.

We feel confident at this time, that if you continue to remit your weekly payments, we anticipate no problem in handling your account.

Should there be any questions, please feel free to contact my office.

Very truly yours,

P. L. CERALDI.

[Advertisement from True Confessions, September 1967]

BILL PROBLEMS? CAN'T MAKE ENDS MEET?

Nobody refused up to $10,000.00

POOR CREDIT, No Trouble. NOT A LOAN CO.
Send Your Name for FREE APPLICATION.

AUTOMATIC ACCEPTANCE. Dept. 10
307 Pocasset Ave., Providence, R.I. or
318 Broadway Blvd., Reno, Nevada

Automatic Acceptance, Inc.

Financial Consultants

* * * *

Nationwide Service

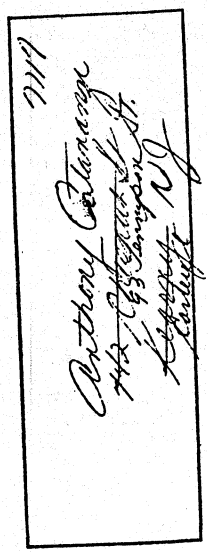
* * * *

NOT A LOAN CO.

* * * *

Please change address!

AUTOMATIC ACCEPTANCE, INC.
307 Pocasset Avenue
Providence, R. I.



CONSUMER CREDIT PROTECTION ACT

COMPLETE SERVICE CHARGE IS 6 PER CENT PER YEAR ON TOTAL AMOUNT

PAYMENT $ 25.00 PER WEEK—BEGINNING 5-6-67

PLEASE DO NOT SEND PERSONAL CHECKS

	DATE	AMT. PAID	TOTAL REC.	INT.		DATE	AMT. PAID	TOTAL REC.	INT.
1	7/6/67	25 00			23				
2	7/20/67	25 00			24				
3	7/27/67	25 00			25				
4	6/5/67	25.00			26				
5					27				
6					28				
7					29				
8					30				
9					31				
10					32				
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APPENDIX B

TRUTH-IN-LENDING INQUIRY, CITY HALL, NEW YORK, N.Y., AUGUST 28, 1967, 10 A.M.

Present: Congressman Jonathan B. Bingham (Presiding), and Congressman Seymour Halpern.

PROCEEDINGS

The CHAIRMAN. Will the meeting please come to order. We have a heavy schedule and we want to try to stick to it.

First of all, as the organizer of this hearing, I would like to extend a welcome to all of those who will be participating with us today as witnesses and also to welcome our guests.

This hearing is being conducted by the representatives from the New York Metropolitan Area who are members of the Subcommittee on Consumer Affairs of the House Banking and Currency Committee.

The statements made here today and the testimony will be incorporated in the formal record of the hearings that have been conducted and are still open, the hearings by the Consumer Affairs Subcommittee, of which Representative Leonor Sullivan of Missouri is Chairman.

We are grateful to those who are participating here today to shed some light on these very crucial issues in the field of consumer protection.

The basic issue before us is the issue of Truth-in-Lending, and how effectively, through Federal legislation, we can prevent the deception of buyers and of borrowers, to make sure that they know the exact terms under which they are borrowing money and buying goods on time, and also to consider certain provisions that have been added to the legislation in the House and in the bill introduced by Chairman Leonor Sullivan and others of the Subcommittee, including myself, provisions such as prohibition of garnishments among others.

I would like to proceed immediately to the first witness. I know that he has a busy schedule. We have with us, representing the City administration, the Honorable Deputy Mayor, Timothy Costello, who is chairman of a committee in this field for the City administration.

We are very happy to have you with us, Dr. Costello.

STATEMENT OF HON. TIMOTHY W. COSTELLO, DEPUTY MAYOR-CITY ADMINISTRATOR OF THE CITY OF NEW YORK AND CHAIRMAN OF MAYOR LINDSAY'S COUNCIL ON CONSUMER AFFAIRS

Dr. COSTELLO. Mrs. Sullivan, Congressman Bingham, Congressman Halpern, distinguished members of the subcommittee, I am delighted to appear before you and testify in support of the Consumer Credit Protection Bill introduced by Mrs. Sullivan for herself, Mr. Gonzalez, Mr. Minish, Mr. Annunzio, Mr. Bingham and Mr. Halpern. The fact that two of the six sponsors of the bill, Mr. Bingham and Mr. Halpern represents districts within the City of New York, and the fact that they are nominees of three parties, Mr. Bingham having won election as a Democrat-Liberal and Mr. Halpern as a Republican-Liberal, indicate the wide support here in New York for this legislation.

I am delighted, too, that this hearing is being held here in New York City in our own legislative chambers. It is gratifying that at least some members of the congress are beginning to learn where the action is, right here in the city. It is especially appropriate that this bill, H.R. 11601 be discussed publicly here where we have demonstrated a concern and a determination to act on the problems of consumers with a sense of priority and urgency not often demonstrated by municipal government, nor, indeed, by the congress itself.

On April 23 of this year, Mayor Lindsay established a Council on Consumer Affairs composed of every agency whose functions have impact on the consumer. As chairman of the Mayor's Consumer Council, I report daily on radio to the people on food prices in the neighborhoods of the city, on sharp selling practices and smart buying tactics—telling the consumer what to look for and what to

look out for. In almost every field we have surveyed, whether it is food, furniture, sales in the home, the problems of credit, its uses and abuses figure most prominently and that is why I consider the legislation you have proposed of vital importance to this city. Indeed, the protection of the consumer is of such direct interest to the city that we have been strongly considering the introduction of local legislation along the very lines that you are now proposing nationally. I am pleased that we are now, in a sense, able to join forces.

I have seen the list of witnesses who have testified before your committee in Washington, and I will not repeat the evidence presented on the national need for this legislation. I will cite rather the special problems of New York City, the nation's largest city, the city with the largest numbers of poor people, the city with the largest number of non-English speaking consumers who need special protection in seeking goods and credit.

We live in an ever expanding credit economy. The rich and powerful buy, sell, and control vast corporate enterprises on credit. The middle class buy homes, autos, major appliances—on credit. The poor live on credit, often meeting their daily needs on the basis of money to come, to be earned, or to be hoped for.

We are discovering in New York City, as we survey every field of consumer activity that, with some exceptions, the poor generally pay more. They pay more for food at a local grocer because they can't afford to shop for cash at the supermarket. They pay more for household furnishings because they don't have the cash with which to shop for true bargains. They pay more for money as well, because bank credit is not often available to them, few belong to credit unions, and fewer still have developed the basic economic and social institutions through which the lending and borrowing of money becomes a routine and available service rather than a profitable, or in some instances, as your bill states it, a predatory enterprise.

The poor not only pay more but in a real dollar sense, they often pay more for the privilege of paying more. Here's how it works: The local merchant in a poor neighborhood needs a higher profit margin than the big department store. His volume is less, his risks are greater. Above all his cash flow is much narrower, for his chief attraction to the neighborhood customer is credit. Now, in order to meet the price, the customer enters into a credit transaction. He often doesn't realize that his signature at the store or in his home means more cash out of his pocket, from his family income or even his future earnings. Our Consumer Council and our Markets Department, every week receive scores of complaints from such consumers who realize that their $300 bedroom set comes to $1000 when they are through paying; and, indeed, that they might even be forced to continue to pay even though the furniture already has been repossessed. Many of these operations are within the present law—for sharp practice is not always illegal or fraudulent. I am, therefore, most gratified that the bill you have proposed, different from the Senate version, would require full, true meaningful disclosure of interest rates in every credit transaction, including the revolving credit system practiced by retailers in the ghetto market.

Under this system, the unwary consumer can pay interest-on-interest for a succession of goods, with a retailer almost absolved of responsibility because the contracts of sale have in turn been sold to a finance company. This is how the customer who suddenly cannot pay any more, or realizes that he has been bilked and refuses to pay more, can suddenly find himself with goods repossessed by the store and his wages garnisheed by the finance company.

Full disclosure, while by no means a bar to such transactions or a cure for their tragic consequences, sets up an important warning system for the consumer. But the disclosure must be not only in dollars, but as an annual rate of interest by percentage. I therefore regard Title II of your Bill, Sec. 202, paragraphs i and j, which would require disclosure of interest by annual percentage rates as a key provision for consumer protection. If a customer knows that he is required to pay 30, 50, or even above 100 percent of his purchase price in interest over a period, he is far more likely to think twice before giving his signature so freely.

The provision of paragraph K of the same section limits the credit rate to 18 percent a year (which is the common bank rate for personal loans or credit cards such as the new "Everything Card" put out by a major bank in New York) would have some interesting effects. Eighteen percent is below the maximum rate allowed by the New York State Banking Department, which regulates the credit industry here. The small personal loan or finance companies who operate at high risks, generally demand and receive higher interest rates. Would imposing a

maximum of 18 percent serve to encourage a wider bootleg money market? Would it intensify the activities of loan sharks in ghettos? Most importantly, would it leave the poor, who already pay more, with no legal alternative but not to buy at all except for cash? A national credit maximum is a worthy goal but I do not believe it can be imposed by legislation alone. What we need to develop are alternative credit systems, resourceful outlets through which the poor, or might I say, the unmoneyed, the people who do not ordinarily live on cash, can buy, participate and act as full-fledged consumers in the economy. Through the Mayor's Consumer Council, we are now fostering such alternative credit systems. We are trying to develop credit unions in poor communities, helping them organize and pool resources which, if spent individually are pitifully meager, but if conserved jointly can command more resources as well—such as an initial investment in a credit union until a revolving fund can be established.

We are helping to sponsor buying cooperatives which help the consumer to make cash transactions which his individual purchasing power would not allow but which cooperatively can command a fair share of the market. We are encouraging and helping major financial institutions and retail organizations to extend credit creatively and economically in those communities where they do not now operate. In short, if we are going to take any measures that would have the effect of cutting off credit—however exorbitant—from the poor—we have a parallel duty to provide better alternatives for the poor to get credit.

Our Consumer Council has also taken up the question of garnishment of wages, which would be prohibited by your bill. As you know, in New York State garnishment is limited to 10 percent of wages, and furthermore we have now effectively barred the vicious practice of dismissal from employment for reason of a single garnishment within a given year. On the one hand, wages are the only collateral the working man or woman can put up under present credit systems. On the other hand, the garnishee, which attaches wages at the source can be seen as the ultimate weapon of the creditor against the wage earner. As your bill states, correctly, garnishment frequently constitutes a burden on Interstate Commerce. Isn't it proper to ask whether its prohibition would constitute an equal burden on commerce, particularly by removing the only collateral the non-moneyed wage earner can offer to a prospective creditor. In effect, can we make such a prohibition without, at the same time, providing alternative systems of credit, alternative means of meeting the limited credit needs of the poor.

We are not talking of the poor alone. On the contrary, we are talking now about a national phenomenon that affects all people—the credit economy. I am struck by the fantastic and alarming growth of bankruptcy in New York City. In the Southern District Court, which includes Manhattan and the Bronx, a total of 2,609 personal bankruptcies were filed in 1966; interestingly that same year there were 1,435 business bankruptcies filed—just a little more than half of the personal bankruptcies. The rate of Business bankruptcies has declined fairly steadily from 2200 in 1961 to 1435 in 1966. The rise in personal petitions reflects the national figures as well. In 1961 there were 15,241 business petitions filed in bankruptcies across the country. In 1966 the figure rose, but only to 16,430. For the same years, personal petitions in bankruptcies, including wage earners, rose from 153,125 to 204,185 last year. I think this says something about our economy and our society. We are paying the price of greed. With our society so oriented towards the production, acquisition and accumulation of material goods, it is hard to turn around and tell people to reorient their own lives and own spending patterns. It is particularly difficult to tell the poor, who are already at a disadvantage, to impose upon themselves the further disadvantage of not buying because they lack the cash. Of all commodities, credit is probably the most undemocratically distributed. Those who require it most have least protection. Is the poor family that longs for a television set as its only means of recreation, to have less opportunity to buy one, than the middle class family that routinely buys a car on monthly terms or a home on a 30-year mortgage?

While we cannot legislate against greed—the greed of those who profit by the acquisitive urge of others must be curbed. These measures therefore, stringent as they may be, merit our support not only for the protection they afford the consumer of credit, but for the values they can help to instill in the American economy and society. If this measure helps curb the acquisitiveness of Americans who buy at rates they really cannor afford, and more importantly would punish the greed of those who prey on that acquisitiveness that affects us all—rich, poor and middle class alike—it merits our complete support.

Finally a word about the Commission on Consumer Finances. As you may know, in my role as City Administrator I am actively opposed to the proliferation of government agencies. In fact, this administration is deeply engaged in a major reorganization that would consolidate our own municipal agencies into more rational, simplified and above all fewer, administrative structures. On the other hand, I am aware of the need to focus substantive national attention on the problems of consumers and to build an official body of information, expertise and authority on this vital subject. When a prominent business executive can publicly decry before the Congress, the growing interest in "consumerism," I think it is high time for all of us to respond with a resounding "Yes," we are interested in the consumer. We are concerned, we are determined, we will act. To the extent that the proposed commission would be set up to accomplish such goals that result in real action, we would welcome its establishment as we would the passage of this entire legislation.

May I say in summary that countless studies have demonstrated that the poor pay more. There is no area in which they pay more than in the area of credit. Any steps that we can take, beginning steps, strong steps, such as represented in your legislation, are steps that we must take in order to rectify a situation which imposes a heavy burden of inequity on those who can least afford it.

Thank you very much.

The CHAIRMAN. Thank you very much, Dr. Costello. We are most grateful to you for a very comprehensive and thoughtful statement. I would like to be in a position to ask you questions, but in the interests of your time and our heavy schedule here today, I just want to ask one question, and that is whether you feel that Federal legislation in the area of garnishments, if perhaps adjusted to meet some of the concerns that you have, would be helpful in supporting local legislation in the area?

Dr. COSTELLO. Yes, it would. I have great concern about the use of garnishment in a way that jeopardizes the livelihoods of those who live very, very close to the poverty level. In general, I am in favor of the banishment of the garnishment privilege.

I am concerned, however, that in doing so, we make it impossible for the poor to share fully in our credit society, and so my testimony has emphasized that if we do banish garnishment, then we have a very heavy responsibility to develop alternative means for the poor to obtain credit; such as, in a modified credit union where only a part of the lending money would come from investment by the members themselves.

The CHAIRMAN. Thank you very much.

I am very happy that you took a full part in this meeting today.

Congressman Halpern is from Queens, and is one of the co-sponsors of the 11601 Bill. I would like to say that this is a panel and we are all operating as equals and we are very happy to have taken part today with one who has contributed a great deal in the consumer-protection field.

Congressman HALPERN. Thank you.

I would like to commend our distinguished witness who has presented forthright and informative testimony this morning and I am sure that his testimony will prove to be most helpful to us in shaping meaningful and effective legislation in this field, legislation that is long overdue and certainly much needed.

Now, Mr. Deputy Mayor, as you know, the bill that passed the Senate covers only full disclosure of certain interest and finance charges.

Now, the House bill, which Mr. Bingham and I joined Mrs. Sullivan in sponsoring, is much stronger. We include revolving credit; we include all financial charges of ten dollars and more; we include a strict disclosure of all advertising of credit purchases and borrowing and, of course, we include garnishments.

Do you prefer the stronger House bill to the Senate bill?

Dr. COSTELLO. I certainly do, particularly in its inclusion of revolving credit. The recent authorization of the Everything Credit Card with its full-scale of advertising suggesting that practically everything can be bought on credit is, of course, of the revolving sort and it probably suggests that increasingly we are going to be living on revolving credit. In the advertising that promotes this credit card, if it is at all indicated, it is indicated that the purchaser, the borrower, pays one and a half percent per month.

Now, if you add this figure up, it comes to a minimum of eighteen percent interest per year, and it would seem to me that if the average borrower were to realize that for the use of $100 for a year, he was being requested to pay

$18, it might curb unwise impulse buying, so that I am certainly in favor of the House bill over the Senate bill.

In this regard, I am also concerned that something be done about garnishments, which is proposed to be done in your bill and which the Senate bill does not consider. I indicated in my response to Congressman Bingham that I am concerned, however, lest the 18 percent limitation and the garnishment dry up whatever credit resources there are for the poor. This point needs to be emphasized.

We have created a credit economy whether we approve of it or disapprove of it. It's a fact of life that most of the people who have a sense of belonging to our society measure to some extent that sense of belonging by their ability to buy, for instance, a television set when they can't immediately pay cash for it.

As I tried to point out in my testimony, it is even more necessary that the poor who may not have immediate cash be able to obtain certain basic possessions, such as television, such as some household appliances that could reduce sharply the burden of household work.

If we dry up the credit resources that are available to them, we cut them out of this credit society. Now, of course, some of us may feel that no one should borrow to buy anything less than a necessity, but unfortunately, this is not the society we have created, and I think we reduce the poor to second-class membership in that society if we make it absolutely impossible for them to find some means of borrowing.

Control that means of borrowing carefully; inform them of exactly what is involved, provided if you do banish the garnishment and limit rates of 18 percent; provide alternative means to a modified credit union so credit continues to be available to those who would not have it.

Congressman HALPERN. I would like to correct the record from $10 or more. I meant to say $10 or less.

Mr. Deputy Mayor, in what ways do you see the City Government complementing programs at the Federal level?

Dr. COSTELLO. Well, the Senate bill passed. Of course, we were interested in blocking up what we considered to be the loopholes. I think the House bill goes a considerable distance in blocking up those loopholes.

The important thing the House bill does is include revolving credit, which is a rapidly expanding field of credit. It does get at credit charges of less than $10, which are frequently those involved in purchases by the poor.

It opens a door for consideration of the garnishment issue which ought to be examined. I want to emphasize that, and it does set up a Commission on Consumer Affairs. It does provide an opportunity to bring sharp focus to bear on the problems of the consumer.

Congressman HALPERN. In what way do you see the City government complementing the program on a Federal level? What programs does the City have and are foreseen for consumer protection?

Dr. COSTELLO. The City, as I mentioned before, has been thinking about legislation in this field which perhaps would be made unnecessary if a strong House bill were passed. But, in addition, the City sees as its responsibility organizing the poor in co-operatives so that through cash buying on a cooperative basis, lower prices might be obtained. We have also been working with community groups to develop credit unions which would meet one of the problems you raised.

I think the City would have, through the Mayor's Council on Consumer Affairs, a heavy responsibility in informing the average consumer and poor consumer what his legislative rights are. One of the things we have discovered in our work is that to pass a law is one thing and to educate the consumer in what his rights are under the law and to encourage him to command those rights is quite another thing. And at the local level, we think acquainting the people with what their rights are is one of our responsibilities.

The CHAIRMAN. That is all. Thank you.

Congressman HALPERN. I want to thank the distinguished Deputy Mayor for his very enlightening testimony.

The CHAIRMAN. Thank you very much.

The next witness, who has to leave for Albany, is the Hon. Guy R. Brewer, Assistant to the Borough President of Queens, but he is here representing the Borough President Badillo of the Bronx. He is Chairman of the Subcommittee of Consumer Protection of the New York Constitutional Convention.

STATEMENT OF HON. GUY R. BREWER

Mr. BREWER. I don't have a prepared statement, Congressman, because the call came to me when I was down in the country, and I was told on my way to Albany to stop by here and share a few of the things we are trying to do there with your Committee, in the hope that it might be helpful.

Let me say, first of all, sir, that I am very happy to be here with you and, of course, Congressman Halpern, from my own borough.

In further identification of myself, in addition to being Chairman of the Subcommittee on Consumer Protection at the New York State Constitutional Convention, I have for a number of years been a Director of the Congressional Educational Institute, and I regret to say that over the years I have developed some cynicism as to whether the consumer can ever be educated. It seems to me that it is almost impossible in our type of society to educate people to be smart consumers and not to rush out and buy every sort of trivia.

Mention has been made by Deputy Mayor Costello concerning the great disadvantage suffered by the poor and the fears that he had of cutting off sources of credit for the poor, thereby keeping them from sharing in all of these gadgets of our so-called affluent society. I share that same concern, but I think that also he might concern himself with these people further out on the Island from us, Congressman Halpern, the people who live out in Nassau and Suffolk Counties in these split levels and the people who have rushed out and bought everything under the sun in addition to the split levels, and they are up to their necks in debt and three weeks off of a payroll will make them candidates for welfare.

But that's the society—as Mr. Costello pointed out—in which we live. It's a vast problem.

Now, here's the way we tried to attack it—and I simply want to share this with you in the belief that it must be attacked on every level, National, State and local, as they are trying to do in New York City. We held hearings, the Subcommittee held hearings all over the State. We held hearings from Brooklyn to Buffalo, and we accumulated reams of testimony. We had Congressman Lester Wolff who came before us. We had Deputy Mayor Costello. We had many, many persons from unions, and we had a cross-section of the entire population of New York State who came before us, and out of all that testimony one fact emerged, and that is that the consumer in this State and in every state desperately needs protection. And you are to be commended on your projection of this Bill 11601 that you are projecting. We think it is much better and it is much more desirable than the Senate bill. It offers more protection to the consumer and we have found that we have got to have a new approach to this thing.

Now, it might be asked what can a Constitutional Convention do in this hearing? As you gentlemen know, being lawyers, a Constitutional Convention cannot write laws. It is not the purpose of a Constitutional Convention to legislate, but it can enumerate in broad principles certain things for the welfare of the people of our State.

For instance, we have reiterated that the forests of our State shall be forever wild. That is a protection of the forests of our State. Now, we also had the proposition coming out that will say that the days of caveat emptor have outlived their usefulness, and that it is the duty of the State and it is the legislative concern of the State to see that its citizens are not victimized by unscrupulous practices and by all these sort of things to which your Committee is directing itself. That will be the broad scope of what we hope will be voted on and accepted favorably by the Convention and will be incorporated into the Constitution.

A simple terse statement, stating that it is the concern of the State of New York to protect its citizens who are consumers—and God knows that means all of us, we are all consumers. And frankly, I can't see how you are going to get much opposition to it, but you never can tell, and this seems to be the sort of thing everybody as a consumer should want, and it should be a bi-partisan proposition when it hits the floor of the Convention. We certainly hope it will be bi-partisan and the State of New York will write into its Constitution that the consumer must be protected.

We have found that it is not enough. For instance, mention has been made by Mr. Costello of the prices, the higher prices, that people pay in ghetto areas. Now, that is very true, and the thing that is most shocking is—and this has

something to do with the unrest in our cities, gentlemen, this very thing is one of the causes of it, but unlike that, here is something that many people don't realize which is that it is not the small business man, the small entrepreneur operating in the ghetto that takes advantage of the ghetto dwellers by these unscrupulous prices, but it is also your largest chains in America that do it.

We have one of these chains that are constantly on the radio saying "We care about you," and testimony was brought our right here in the City of New York that in a certain section of East Harlem they charge more for a can of beans and for various other things in that chain store here than they charge in the stores in the west of Manhattan, and there is no reason for that.

I went up to Massachusetts and Boston to see how they are working up there on the matter protecting the consumer, and I was told up there of the reforms they are initiating, and as Mrs. Eichler up there said to me, "It is not only the small credit company or the fly-by-night credit company, but the old, established financial institutions in the State of Massachusetts that are also guilty of these practices where the consumer is concerned."

Some of the ancestors of these people who came over on the Mayflower who run the big banks and trust companies in Boston are just as guilty in these practices as the little finance officer. One of the things that we need is something in the law, whether at the State level or municipal level, where the finance company could not, after the person who sold this machine which is something that is going to cure arthritis, and he sells it for $300 and puts the paper in the bank and then leaves going on to greener pastures, and his machine breaks down because it never was any good in the first place, and the machine breaks down and the person misses the payment and the bank starts a garnishee or sues them or forecloses on their home, and the bank says, "We are not responsible for the person who sold it to you."

There has got to be some responsibility for the sale to be followed, and we certainly wanted to inform you of what we are trying to do on the State level, at the Constitutional level, in putting this into the Constitution. And we wanted to tell you that certainly our Committee, the Committee on Health, Housing and Social Services, is very, very happy that your Committee is working as diligently as possible and we wish you God speed in your efforts.

The CHAIRMAN. Thank you very much, Mr. Brewer.

Congressman HALPERN. I just have one very brief question.

My very distinguished friend, the witness, is a dear friend and a fine public servant. He has been a credit as a public servant and it's a pleasure to welcome him to this hearing, and I wish to commend him.

We are constantly reminded by Congressman Gonzalez of Texas, who is on this Subcommittee and is also a sponsor of H.R. 11601, that Texas and its Constitution prohibits garnishment, and Pennsylvania has prohibited it for 120 years.

Are you considering such a provision in our new State Constitution?

Mr. BREWER. Probably no place. The details are the subject of legislation. The details have no place in the Constitution, but we do want to give the Legislature, by our proposition, we want to give them, if not a mandate, we want to give them a broad umbrella under which to produce this kind of legislation.

And let me tell you, gentlemen, when the Constitutional Convention is over and we hope to meet by the September 26th deadline, we won't need it if everything is down here instead of in Albany. We try to meet it and even after we close, I can continue my efforts in January when the Legislature meets.

Let me say I want to disagree with Mr. Costello. I am not so concerned about this garnishment provision, that it will dry up credit for the poor. This thing that everybody has got to have credit and everybody has got to live on borrowed money, and all that sort of thing, we have got to come to grips with it one day, and it seems to me the sooner the better. I don't mean for the essentials of credit, but for all of these trivia, like electric can openers, when you can buy a can opener for twenty-five cents why do you have to go out and buy one for $10 that goes on the wall and that's electric. All of that sort of stuff, credit for that should be made hard.

I am not trying to be concerned with drying up credit for the poor and middle class. I think we ought to be concerned with the middle class out on the Island, Congressman. One of these days they are going to be in a bad way.

Congressman HALPERN. Thank you.

The CHAIRMAN. Thank you very much. We are most grateful for your interrupting your schedule and giving this very helpful statement.

Mr. BREWER. It was a pleasure.

The CHAIRMAN. Is Mr. Leon Quinn here yet? If not, we would like very much to have a word from Mrs. Evelyn Dubrow, who is one of the leaders in this field and has been for a long time, representing the International Ladies Garment Workers Union, and she is constantly pressing in Washington for effective consumer legislation.

She is a good friend, going back a number of years.

STATEMENT OF MRS. EVELYN DUBROW

Mrs. EVELYN DUBROW. Thank you very much, Congressman Bingham.

I am representing the International Ladies Garment Workers Union and I want to make a very brief statement indicating the support of the International Ladies Garment Workers Union for the Truth in Lending Bill and supporting the AFL–CIO's position on which we testified some time ago.

I would like to point out that in New York City we have 200,000 members and in the State we have 250,000 members who work in the many garment plants in this City and in this State, and I suspect if there is any union that has had experience with the need for full disclosure in Truth in Lending, I would like to suggest the International Ladies Garment Workers Union.

This is not a new complaint with us.

When Senator Paul Douglas introduced Truth in Lending seven years ago we supported it then.

We have worked very hard, and, as a matter of fact, testified at great length at hearings held by Senator Douglas several years ago, indicating the need for full annual disclosure in terms of interest rates on any kind of credit transaction that takes place, and while we were dismayed when Senator Douglas was not returned to the Senate, we were delighted to know that Senator Proxmire took up the fight for the Truth in Lending Bill, which passed in the Senate very recently.

We were very disappointed in S. 5, and I would like to say H.R. 11601 makes up some of those short-comings introduced by Congresswoman Sullivan and supported by the two Congressmen here today.

One section, of course, is revolving credit.

I am sure that the Congressmen know, as I do, that more and more revolving credit has been the way of life for people on all economic levels, and that eventually, I think, the Undersecretary of the Treasury testified to this effect, that revolving credit would make it not necessary for people to carry cash with them before long.

So we certainly feel that any Truth in Lending Bill that gets passed by the Congress, we hope it will be passed, should certainly include revolving credit.

The second large hole in S. 5, which H.R. 11601 attempts to clear up, is the fact of credit advertising and credit life insurance, both of which take advantage not only of the poor who borrow money or buy things on installments, but for people on all levels, because it does not take into consideration the amount of money one has to pay when borrowing money on credit life insurance.

Certainly the advertising that goes on to sell money in this country is incredible.

If you look in the newspapers in New York or elsewhere you will find the grand kind of lures that are made to people who don't understand what it is they are getting into, and we feel there is no harm in truth.

I would like to pay my tribute in this respect to the honest bankers, the honest financiers, the honest creditors, the honest advertisers who understand this is not the way to do legitimate business.

Of course, we were appalled when the Senate passed a bill which excluded all finance charges under $10.

Our union will have some testimony later which Mrs. Rolon of Local 40 will read, will be presented with actual witnesses who suffered from the lack of a Truth In Lending Bill and, I think, they will testify, among other things, that finance charges under $10 do mount up when you buy a number of things in a number of places on which you have to pay an interest rate.

So, Congressman Bingham and Congressman Halpern, I can assure you that we will be very concerned with the Truth in Lending aspect of this legislation.

Let me mention garnishees for a minute, because while the AFL–CIO's position and, therefore, our position, is not necessarily calling for garnishment in

this particular piece of legislation, I am sure that we understand the evils that are connected with garnishment, and that whatever comes out of the Bill, if you are fortunate enough to put it in, I can assure you we will be happy to have legislation on the books.

The necessity is great. We have about, I would say, forty locals in New York City and maybe twenty more in New York State, and I would think that in those local unions, I can say without any doubt in my mind, that the kind of problems that come to us from our individual members, both to their business agents, to our educational directors, to our managers, that one of the largest percentages of problems we have is the matter of garnishees.

Our people don't understand it. They don't know this is happening to them, they often are the victims of people who sell them not only damaged goods, but who charge them hundreds of dollars and much, much more than the regular percentage in the kind of goods they buy, and all I can say is that garnishment is a problem.

Garnishment certainly belongs in front of the Banking and Currency Committee.

We hope that if it isn't taken care of in this bill that certainly you will put your minds to making sure there is legislation.

So I would like to say, Mr. Chairman, on behalf of the ILGWU and for the AFL–CIO's Subcommittee on Consumer Affairs, of which I am Chairman, we are delighted you are having these hearings.

We think New York is a logical place to have such hearings. We think that people on all levels ought to be protected.

This is a matter certainly for the poor, but I would say that even the middle class and certainly the rich do not like to be bilked.

When people know what they are paying percentage-wise in dollars and cents on an annual basis for borrowing money, buying things on installments, or getting things through revolving credit, then you will be serving your constituencies well, and I wish you good luck in this hearing.

The CHAIRMAN. Thank you very much, Evelyn Dubrow, for a wonderful statement and we thank you for being here.

Congressman HALPERN. I don't have any statements, but I don't often get the opportunity to compliment Miss Dubrow, so I would like to extend my compliments to you, Miss Dubrow, for your spirited and direct testimony.

You have been constantly in the forefront for the fight for consumer legislation and for bettering the plight of the consumer.

In fact, I recall Miss Dubrow at the hearings at Foley Square here right across the street, before Senator Douglas, in which I participated seven years ago. Since then the consumer debt rose from forty billion in 1960 to almost seventy-four billion in 1963.

Mortgages rose from $201 billion to $227 billion.

Consumer bankruptcies rose faster than consumer debts.

I cite this because if it was ever timely for remedial legislation it is now.

I would like to thank you, Miss Dubrow.

The CHAIRMAN. Our next witness is the Hon. Percy Sutton, President of the Borough of Manhattan.

Mr. President, we are delighted to have you here today. We know how tight your schedule is and we know how deeply you feel the need for this.

I notice you have a formal speech for us. I wonder if you would like to summarize it?

Hon. PERCY SUTTON. I think you are quite right. It is rather long. I have no intention of reading the entire statement. I shall attempt to summarize.

Let me thank you very much, however, for bringing this hearing, your Committee, in bringing this hearing to New York, and especially am I thankful that you located in the Borough of Manhattan, where there are problems unlike Congressman Halpern's County of Queens.

We have rather more acute problems here in the Borough of Manhattan with regard to the evil of the fraud problem in the area of consumer goods purchases.

Legislation for the protection of consumers such as that now before the House Committee of Banking and Currency is long overdue.

I believe that the interests of American consumers, who are the foundation of the American economic miracle, have been unrepresented in the halls of Congress for too long.

Therefore, I wish at the outset to make clear my support for the kind of legislation now being considered by this Committee.

I need not supply you with a battery of facts and figures to prove the obvious. Consumers credit has assumed tremendous importance in the lives of virtually all Americans. They see it as the vehicle by which they can attain the material advantages brought within their reach by the technological revolution.

STATEMENT BY HON. PERCY E. SUTTON, PRESIDENT OF THE BOROUGH OF MANHATTAN

President SUTTON. Legislation for the protection of consumers such as that now before the House Committee on Banking and Currency is long overdue. I believe that the interests of American consumers, who are the foundation of the American economic miracle, have been unrepresented in the halls of Congress for too long. Therefore, I wish at the outset to make clear my support for the kind of legislation now being considered by this Committee.

It is particularly praiseworthy that reform in the field of consumer credit at last appears to be nearing realization. I need not supply you with a battery of facts and figures to prove the obvious: consumer credit has assumed tremendous importance in the lives of virtually all Americans. They see it as the vehicle by which they can attain the material advantages brought within their reach by the technological revolution. What they seldom realize, however, is that credit itself is a commodity for it has a price just as the automobiles, washing machines, and television sets. Few consumers of credit understand the price of the credit they receive because it is hidden in a maze of figures and esoteric terminology that fills the typical retail installment contract, revolving credit agreement, or loan application.

This obfuscation and confusion makes it impossible for the average consumer to compare the price and quality of the various credit arrangements offered to him. The result has been an intolerable lack of the true competition that should exist between the many commercial institutions that extend credit to the consumer.

I am convinced that the first step toward ameliorating these abuses is to require, by law, the clear disclosure of all credit costs in both dollars-per-hundred and an annual percentage rate. Thus, I must applaud the strong full-disclosure provisions of the Consumer Credit Protection Act—provisions which will return to the consumer the bargaining power that current credit practices prevents him from exercising. However, I want to emphasize as strongly as possible this morning that this full disclosure reform will be of greatest significance for the millions of Americans who live below the poverty line—those for whom credit has been the source of their exploitation and oppression, rather than the short cut to the good life that the popular mythology would have them believe.

Before elaborating on this point, however, I want to point out that there is a falacy in the common supposition that low-income people are precluded by their circumstances from enjoying middle-class goods and "luxuries", such as stereo phonographs and color television sets.

In truth, the poor have constituted a highly lucrative market for the cornucopia of consumer goods which are such an important part of the American way of life.

The reason for this apparent paradox—(that the poor can afford these fruits of a moderate income)—lies in a second paradox; *credit today is readily extended to those who can least afford it and therefore would seem to be the greatest risks.*

I invite anyone who doubts the accuracy of this statement to come to East Harlem's Third Avenue and Central Harlem's West 125th Street, where furniture and appliance stores offer easy credit to virtually anyone who walks in off the street, including those on welfare. And yet, it is these low-income people who are often worst equipped in terms of education and experience to cope effectively with the mysteries of the credit system and to choose rationally between the various sources of credit offered to them.

The evils of this situation are compounded by tragedy that is repeated over and over among the urban poor. When the poor consumer, who is usually tied to a number of retail installment contracts, falls behind in his payments—(not unlikely for one whose income is by definition, marginal)— he very often finds himself caught in a downward spiral of events from which he will be lucky to

recover; the finance company, which has purchased the contract from the retailer, files suit to collect the debt; the debtor-defendant is not served with summons and the undefended action results in a default judgment; the merchandise purchased under the contract is repossessed; a deficiency judgment for the amount left outstanding is rendered; the debtor's salary is garnisheed to pay off the deficiency; the debtor is fired from his job as a result of the garnishment; now unemployed, he is without a job, without the purchased commodity, and in debt.

The sad truth is that this story—and the economic exploitation that leads to it—is all too common in the nation's slums. Indeed, more than a little of the smouldering resentment that has exploded in cities across the country can honestly be attributed to the victimization of the comsumer poor. Therefore, I must implore you to remember that while the middle-income consumer will no doubt benefit from the reforms embodied in the Consumer Credit Protection Act, which you have initiated, these reforms are much more crucial to the poor of the nation's slums and ghettos. It is the poor consumers who have suffered the worst from these credit abuses.

With these thoughts in mind, I would like to turn my attention to two important features of the Consumer Credit Protection Act which I feel merit some specific comment. The first is Section 203(K), which, unfortunately, is not included in the Truth-in-Lending Act. This section requires full disclosure of interest rates on revolving credit accounts. I want to state that both as an individual and as one who comes from the ghetto to this high position as President of the Borough of Manhattan, I unequivocally support this provision and feel that its deletion from the Senate version substantially emasculates the bill.

I am sure other witnesses have and will demonstrate to this Committee, that the revolving credit accounts have come to play an extremely important role in credit operations in this country.

As former Senator Paul Douglas testified before you, to omit revolving credit accounts from the coverage of this bill is to create an enormous loophole in the law, especially in view of the fact that this kind of credit arrangement is becoming more and more prevalent.

Moreover, it is my impression that the revolving account is one of the more devious and misleading varieties of credit schemes. I therefore feel little sympathy for those banks, department stores, and other institutions who piously claim that it would be too time consuming and too difficult to in each account pierce the complexities of this accounting device in order to arrive at the true interest rate. What they pass off as "complexities" I look upon as a kind of flagrant chicanery from which we must rescue the consumer if we are going to make any headway against the injustices the credit system presently perpetuates.

One particularly insidious aspect of the revolving credit account is that until the account is completely paid off, the creditor continues to hold a chattel mortgage on each item that has been purchased on the account.

Thus it is that if the debtor defaults, the creditor can repossess all of the items bought on the account, even though the debtor may have already made enough payments to cover the cost of one or more of the items.

In practical terms, the result for the poor debtor who purchases all his furniture, appliances, and equipment on such an account is that he will lose everything he has purchased; not having paid for all of the goods, he owns none of them.

Title II of the Consumer Credit Protection Act, the Prohibition of Garnishment of Wages, represents a second important addition to consumer protection.

Wage garnishments have had a profound effect in continuing the instability of the low-income community. Without garnishments unscrupulous merchants would not be able to offer credit to customers without concern for the borrower's ability to pay. Instead of investigating the credit rating of the perspective consumer, merchants frequently ask only one question: "Do you have a job?" If the answer is "yes", no further questions are asked; because the unscrupulous creditor is not interested in the welfare of his customer, and he knows that the account can be collected through the use of wage garnishment if the buyer defaults.

The prohibition against wage garnishments will force credit merchants to look more carefully at the ability of the individual consumer to pay for the

goods that he wishes to buy, and will increase the financial stability of the individual low-income consumers.

Wage garnishments have become an overwhelming burden on the working class. Low income families are the ones who are continually exposed to wage garnishments and are also the ones who suffer the most when their take-home pay is reduced by even a few dollars. A worker who buys a $66 set of kitchenware from a door-to-door salesman may find that his debt has skyrocketed to $122 after a default. The new amount includes court costs, attorney's fees, and interest charges. He may also find that a crucial $6 is being taken out of his $60 gross weekly earnings to pay off the $122.

The worker, burdened by a garnishment for a much greater amount than he had originally expected to pay on that debt, may be forced to default on the other time contracts he has made. Several more judgments are piled up against him, and each creditor waits his turn to garnishee the defaulter. The worker's employer, annoyed by the bother of extra bookkeeping, may discharge the worker, leaving him to join the anonymous mass of unemployed. No one will want to hire him, because no one wants the inconvenience of having an employee who has a wage garnishment against him. The debtor is entrapped in a modern form of debtor's prison!

Workers trapped in this situation have few paths open to them. Frequently, low income workers faced by the burden of garnishments find that the income they are able to take home from work is so meager that it is easier to stop working altogether, apply for public welfare, and leave the burden of debts behind. Unfortunately, the garnishments do not disappear when the worker goes on relief; they continue to collect interest and will be placed on his wages if he ever starts to work again. The prospect of having to encounter old debts serves as an incentive to remain on the relief rolls rather than to seek work.

The second escape to which the financially oppressed are driven is bankruptcy. More and more low income wage earners are learning that bankruptcy is an instrument that the government has provided to discharge debts which are overburdening. The poor people who use bankruptcy as a remedy usually owe relatively small amounts, but are under wage garnishees which take such a large proportion of their income that they can not afford to continue to support their families and pay their debts.

I believe a federal prohibition of wage garnishments would be an important step in the consumer protection of the poor. However, if wage garnishments are not entirely eliminated, the present law should be changed. The use of garnishment and the percentage of a debtor's income to be garnisheed in a given case should be at the discretion of the court. Once the percentage of income to be garnisheed is established, it should be subject to change at the discretion of the court. This type of individualized decision can take into consideration the needs of the individual debtor and his family. In this way the debtor will be able to support his family and gradually relieve his indebtedness.

Three reforms not included in this legislation should accompany the prohibition wage garnishments. In order to insure maximum protection to consumers who buy on installment sales contracts: 1) limitation of the number of co-signers, 2) prohibition of deficiency judgments after repossession, 3) removal of the ten day limit for the exercise of claims against the seller after notice of the assignment of the contract to a credit company has been made. Each of these three practices shares responsibility for the continuation of the precarious economic conditions of the poor.

A prevalent practice in low-income areas is for merchants to insist upon several co-signers for each installment contract. Each co-signer agrees to be personally responsible if the recipient of the goods defaults in payment of the contract. This practice is used by merchants as an alternative to investigating the consumer's ability to pay. The merchant does not have to find out if the contemplated purchase will overburden the buyer, because if the buyer defaults the merchant can bring an action against each of the co-signers in order to collect the outstanding balance. As long as wage garnishments are permitted the merchant will be able to garnishee the wages of each of the co-signers. This spurious practice of gaining security through signatures, rather than through investigation of the consumer's ability to pay, can be controlled if the number of co-signers is limited by law. If merchants give credit discretely, there should be no need to have more than two signatures on any installment contract; and

there is no reason why we should continue to protect merchants whose lack of concern for their customers' welfare is manifest in their extending credit to people who can not afford credit and in their requiring multiple signatures on contracts as security.

The second reform I would like to see included in consumer protection legislation is the proscription of deficiency judgments after a repossession. An interview in *The Poor Pay More*, a book on consumer fraud by David Caplovitz, gives an excellent example of this abuse:

"The first thing (my husband) bought on time was a car in a used car lot. The original price of the car was $500, the downpayment $10. He had the car about two months and had paid about $80. Then he missed payments for about three weeks and the car was towed away without notice. Payments had been made to a discount company which was handling credit. I telephoned the company, and they told me that if I sent $50 they'd return the car. I did, and then received a notice in the mail saying the car was going to be auctioned. They kept the $50 and said nothing about it. My husband didn't go to the auction since he couldn't have bought the car back anyway. Then we received a notice saying the car was sold for $35.

"The company told us we owed $800 in all on the car that cost $500, because of interest and legal fees." (pp. 165–166)

In this case the husband still owes $800 less the $90 that he paid and the $35 auction price, even though he does not have the car! The fact that the car was taken away from the family makes no legal difference; $675 is still owed. The lady is giving this interview end by saying:

"I went to Legal Aid which said nothing could be done. Since my husband was out of work, they garnisheed my brother-in-law's salary." (pp. 165–166)

"Nothing could be done," and these low income consumers were forced to pay for a car that they did not have. Consumer abuse of this kind must be ended. Prohibition of deficiency judgments after repossession would protect consumers against having to pay for merchandise that has been legally taken from them. If consumers are forced to continue to pay for goods they have bought, they should be entitled to keep those goods.

The final consumer protection reform that I would like to propose for your consideration is the removal of the ten day period or any period provided by state law after the notice of assignment, in which the consumer must make all his claims for defects in merchandise against the seller. This practice is most heineous because it disarms the installment buyer of his most effective weapon against poor service or shoddy merchandise—refusal to pay!

The usual procedure in low income neighborhoods is for a merchant to sell goods to the consumer under an installment contract and then to sell the installment contract to a company that specializes in payment collection. The consumer has only ten days to object to the sale of his installment contract. Usually there are no apparent defects in the merchandise for the first ten days. If the customer does complain during that time he is stalled and not told of the necessity to object to the assignment of his contract in writing. After the assignment is complete defects may begin to appear. Fabrics begin to shred at the seams. Heat dries out the glue that held the furniture together—couches and tables fall apart. The customer returns to the store to complain. There he is told that his contract has been assigned to a credit company and the store no longer has any responsibility for it. Next the consumer contacts the credit company, usually located quite far from the neighborhood store. The credit company tells him that they are a collection agency only and the quality of the goods is the responsibility of the store. The confused consumer has no place to turn. He can not stop his payments, because the credit company will get a judgment and wage garnishment against him; and all complaints to the merchant fall on deaf ears.

The frequency of the repetition of this fact-pattern is astounding. Consumers must be better protected in a world in which knowledgeable merchants face unexperienced buyers. In order to right this situation, we must pass legislation to allow the consumer to bring a claim against the seller within a *reasonable* time after the sale or to allow the consumer to hold the credit company responsible for the merchantability of the goods.

It is important for use to have legislation that will encompass all of these reforms: the prohibition of garnishments of wages, the limitation of the number of co-signers to an installment contract, the prohibition of deficiency judgments after repossession of goods bought on an installment contract, and the removal of

the time limit for the exercise of claims against the seller after notice of assignment of an installment contract. The present system of consumer credit is in need of reform; it is archaic; it is the primary cause of the economic chaos of our low-income families; and it is greatly responsible for the frustration of the low-income Americans who live in ghetto areas. This committee must consider the needs of these people in drafting and acting on new legislation. It is now the time for Congress to take action to protect the *consumers* in our society.

Congressman Bingham, I salute you and your colleagues for conducting these very important hearings and I thank you for indulging my appearance.

I have read to you, gentlemen, in great detail my views.

It is my understanding that what I should do here is summarize my views. I have not done so in detail, but you will get it from that which I am reading.

The CHAIRMAN. I notice in your statement that you do express a very strong support for the Federal prohibition of wage garnishment.

It has been suggested here earlier today, and at the hearings we have had at Washington, that stopping garnishment would reduce the availability for credit, particularly for the poor.

As you undoubtedly know, there are three states that don't have garnishments, Pennsylvania, Florida and Texas, and they apparently suffer no such trouble.

Borough President SUTTON. Exactly. Those are states that don't have garnishment.

I introduced similar legislation in the State Legislature in 1962 and '66. The argument is if we restrict garnishments we would not have free lending for the public.

Let me say there are persons who should not have credit, and I am for this for persons who are unable to pay.

Let me say this: In any other state it does not prove a restriction on credit

The CHAIRMAN. We are grateful for your suggestion for additional protection, that there should not be repossession.

I think this is the first time we have had this kind of prohibition.

Do you feel that this is something that should be undertaken on the Federal level or is it better on the State and local level?

Borough President SUTTON. I think it would be much easier for you to do this at the Federal level, than it would be for us to do it on a state by state level.

I believe there is ample Federal involvement for our doing this at the Federal level.

The CHAIRMAN. Thank you, very much, Borough President Sutton.

Congressman Halpern?

Congresman HALPERN. First I would like to commend our very distinguished witness, the Borough President of Manhattan.

You have given excellent testimony, and I have had occasion to look over your prepared presentation, as I have sat here, and it contains some of the soundest arguments I have seen for this bill, and I am certain it will be a valuable addition to our Committee's record, and hopefully for the shaping of a very effective bill.

We have heard that deceptive credit factors have been a significant contributor to unrest and ultimately to violence in the low-income areas of our City.

Would you say that is so?

Borough President SUTTON. Yes. I don't go with those that say riots are caused by——

Congressman HALPERN. Yes, I know.

Borough President SUTTON. I am sure of this, sir, that a short survey has shown that those cities where riots have occurred, that in those stores that were thought to be gouging by credit or cheats, those are the stores to be the first victims of the rioters.

I can say this, first, that while it may not be one of the major contributors, that is a part of the creating of the timing of apathy and depression that exists in a ghetto.

The high interest rates, the gouging, and too often the gouging and cheating that occurs in the low income communities, is a fact that contributes to the alienation that comes.

Congressman HALPERN. Do you feel that consumer ignorance has played a more significant role in deceptive practices?

Borough President SUTTON. I think I should tell you, sir, I come from the ghetto, and I practiced law all of the years I practiced law on 125th Street.

More than one half of my practice dealt with people in local problems; landlord-tenant problems, consumer protection problems.

Not only is there ignorance, but there is downright cheating. Not just ignorance or being cheated, but even if they were not ignorant or being cheated, the consumer credit machinery is such as to deplete their income.

So it is a combination of the two.

Congressman HALPERN. Thank you very much, Borough President Sutton.

The CHAIRMAN. If I could ask you one more question.

I notice also you have given strong support for control of the revolving account as a form of credit subject to abuse.

We have heard again and again in Washington, where they charge one and a half percent monthly as a finance charge, but that is not the same as eighteen percent a year.

This seems hard to believe, but it really doesn't work out that way. They don't like to put on there that it is really eighteen percent a year.

Borough President SUTTON. Yes. Right now this is an awful thing, because it exists with our biggest department stores as well as our corner department store.

One and a half percent interest on the balance that is left, and they say this is not eighteen percent a year, because the balance fluctuates, and they say also because the balance fluctuates it would be much too expensive to tell each month the purchaser what his actual carrying charges are.

Well, I don't yet understand their mathematics. First they say this is not eighteen percent per year, I don't understand how they say that.

What is wrong with specifying it is one and a half percent a month, at eighteen percent a year, and x number of dollars owed every month.

I think the carrying charges ought to be clearly stated and, I think, if you do nothing else, any attempt ought to clearly state the requirements of the department store or any other store, it should state what the carrying charges actually are.

The CHAIRMAN. Thank you very much, indeed, Mr. Borough President, and we would like to thank you for taking time out of your heavy schedule for helping out in this field.

The CHAIRMAN. The next witnesses will be a group of three witnesses from the ILGWU, Mr. Gerel Rubien, Mrs. Carmen Rolon, Mrs. Anna Zayas.

Do you want to take the stand together?

STATEMENTS OF WITNESSES FOR INTERNATIONAL LADIES GARMENT WORKERS UNION

Mr. RUBIEN. Mr. Chairman, with your permission, I will introduce the next two witnesses.

I am Gerel Rubien, the Education Director of Local 82 of the ILGWU, and the head of our steering committee who has been working many years, as Miss Dubrow told you, in order to effectuate the Truth in Lending law.

Before I introduce to you Mrs. Rolon, I would like to state a few other words, something that Mr. Brewer and Mr. Sutton said, and that is the fear, the anger, the unfair, oppressive installment practices, the effect they have upon the working people of this City.

You see, they come to us in our union, they come in with these problems and many times we cannot rescue them.

They are furious at our economic system. They are distraught with our Government and they are in despair about their ability to get along in the world because of the unfair practices that have been practiced against them; surely they may, but that is our entire economy, the door-to-door salesman then. These things worry us not only in terms of finance, but in terms of morale and citizenship and the contributing citizenship of our workers in this City.

Now permit me to introduce to you Mrs. Carmen Rolon, who is the Educational Director of Local 42, which has a large number of Spanish-speaking members, and Mrs. Rolon deals very much with many of the parties in consumer practices.

Mrs. Rolon.

Mrs. CARMEN ROLON. Local 42 has had most of the problems we have here, the consumer and buyer. Many of our members are really cheated, I can say, because they pay double the price, and if the merchandise is not good for one reason or the other, if they cannot continue to pay on time their salaries are garnished and many of them have lost their jobs on account of the misunderstandings that they can bring in the office of their employer.

They don't want to carry that tremendous burden of work.

For example, we have Dominica Valin. She bought a sectional living room set, a lamp and table, from Stanton Furniture Company for $517.

Two months later it started to rip apart and she complained many times, but not until she came to the union did we get matters settled for repairs on this.

There is Hilda Ortiz. She bought a radio combination from Sears Company for $400. It didn't work properly. After many, many complaints to no avail, she came to the union.

We called the manager and got prompt action in the matter.

Then there was Primitivo Nieves. His wife bought an encyclopedia from a door-to-door salesman for $285, and then he couldn't afford the payments. He could not carry the account.

Being threatened with garnishment he came to the union and we broke the contract.

Justino Garcia had such a difficult case that I referred him to the Legal Aid Society. I couldn't help him.

Then we had Angel Vargas. Angel Vargas bought a camera from Prospect Appliance Corp. for $173. After making three payments, they promised his camera would be delivered. It never came and he came to the union for help.

Margarita Diaz was given a garnishment on the balance and cost after the firm moved without notice. The union arranged payment with a discount.

Carmen Melendez bought a bracelet from Remay Jewelry Company for $55 on the layaway plan. She paid $35 and the firm went out of business, and that was the end of it.

William Garcia, someone used his name at Ace Furniture Company and the union referred him to our lawyer for assistance.

Anna Torres, her salary was garnisheed for the unpaid balance of $273 while she was paying to the firm. Six payments had not been credited to her. The union is working on her case.

I think that is about all I have to say.

Thank you.

The CHAIRMAN. Thank you very much, Mrs. Rolon.

We are very glad to have you here and I notice you referred to the Legal Aid Society as one that you referred very difficult cases to, and we are going to hear later from Miss Mary Tarcher of the Legal Aid Society.

We thank you very much for coming here.

Mrs. ROLON. I forgot another item. I wonder if this is of any importance.

I shop very often in the supermarkets, and when they come to the labels with five cents off, they will never mark it correct. People still pay the regular price until someone comes over to call their attention to it.

So the special offers never go to the consumer, the special offers stay in the market.

The CHAIRMAN. Thank you.

Congressman HALPERN. I haven't any questions, but I wish to thank you for a fine presentation.

The CHAIRMAN. Would Mrs. Zayas like to speak?

Mrs. ZAYAS. No.

The CHAIRMAN. Congressman Halpern?

Congressman HALPERN. We have a telegram from our distinguished Senator Jacob Javits. Our other Senator from New York will attend the hearing and we expect him to appear very soon.

Unfortunately, it was just physically impossible for Senator Javits to be here, but he did send this wire, and I would like to note it for the record.

STATEMENT OF MISS SHIRLEY KRONBERG, HOTEL, MOTEL, AND CLUB EMPLOYEES UNION

The CHAIRMAN. Thank you, Congressman Halpern.

Our next witness is going to be Miss Shirley Kronberg, Director of the Neighborhood Services Council of Hotel, Motel and Club Employees Union.

Miss Kronberg was very active in securing passage of garnishment provisions in New York which prohibit firing of employees because of being garnished once in twelve months.

She is further working for future legislation which will bar garnishments which will leave the employee less than a minimum wage.

We are very happy to have you here, Miss Kronberg.

Miss KRONBERG. Congressmen, it is really a pleasure to be able to address you on the matters we have been dealing actively in for years.

The Council of Hotel, Motel and Club Employees Union, was set up primarily by our union for the purposes of assisting and servicing the 30,000 people and families in the area primarily with consumer protection, garnishees and other areas like housing and things not covered by the union contract.

In other words, anything in the life of our member and his family that is not related to his work.

We have found in the six years of our existence that the biggest problems of our members, particularly the lower paid category, forty percent of our membership, which I guess we can consider in the low economic section of our society.

I am not talking now of the poverty stricken, I am not talking now of people on welfare or people without jobs, but that section of our population which does work and still are poor people earning from $60 to $80 a week, who still have to live with large families on this kind of an income.

Their biggest problem is the problem of consumer protection.

Their biggest problem is the problem of being able to provide for their families, for necessities. I am not talking of luxuries, I am talking of necessities, furniture, a bed for a child to sleep in, or other household goods with which a family must provide itself.

The pitfall into which our members and people like them fall is in the simplest purchase which becomes a major problem in the lives of these people, and the largest cause for impoverishment.

It has been our experience that consumer education by itself, telling people how to shop and where to shop and where to save money is not doing much good.

We have gone to great lengths to educate our membership about shopping for cash, about comparison shopping, about testing the quality of the materials that they are purchasing and so on.

We find that people know what is right, but they are not able to pursue a course which will give them the best purchase.

The largest single reason is that they cannot get credit in a creditable establishment.

There are other persuasive reasons for shopping in what we call the schlock store, the fly-by-night furniture operation or the other firm that operates with the deliberate intent to sell shoddy merchandise at high prices to the poor.

The CHAIRMAN. What is the name of that store?

Miss KRONBERG. Schlock. S-c-h-l-o-c-k. It means shoddy.

There are some they call the dirty dozen.

If you like, I could name them. These operations operate for the purpose of making their money from the sales. This is not where the money lays. The money is in the garnishees.

They are established for the purpose of getting a garnishee. It is a whole operation which employs a legal firm, Marshal's office, affidavit signers—you know, the fellow that serves a summons at 12:00 o'clock in the Bronx and 12:03 in Brooklyn.

All of this is tied together in one big effort to swindle the poor working person.

I am specifying working person, because they don't like to deal and they don't deal with somebody that doesn't have a job, it is not worthwhile, it is hard to collect.

But somebody that has a job is easy prey for this kind of merchant who is looking forward to the day that this worker will default on his payments and then the legal machinery sets in, which puts this worker in intensive slavery, because for years he is compelled to pay for this default.

I recognize the value of the Truth in Lending Bill and the good it will do for the literate, the educated, the people who now know what it is they are paying credit for, and I think it is admirable and I am for it. But the section of your Bill that I like best is the section that will outlaw garnishees, because essentially the people who are literate and who are educated and who can shop and compare by and large will know what they are paying in interest rates.

It is the people who walk into a store and whose entire transaction is oral, who believe what the salesmen tell them, who believe the salesman when he

tells them "This will cost you $2.00 a week." That is all he can calculate, how much will it be a week. He doesn't know how many months, how many years, how much the service charges, how much he is paying for financing, nor will he ever understand what the garnishee will cost him and we can't explain it.

If we try to explain the garnishee and the cost involved in the garnishee, then we are part of that vast machinery that is bilking him, because how can you make a statement that when he bought something that originally cost $200, that now we should have a garnishee for $400.

It is impossible to explain that amount of interest, that the financing, that the initial fees, the legal fees, that all this has doubled the price of what he has bought and the price that he has paid in the first place has been exorbitant.

The price he has paid for the merchandise which he has purchased is far in excess of the true value of the merchandise that he has purchased.

The CHAIRMAN. You go right ahead, Miss Kronberg. Senator Kennedy will wait a minute, I think.

Miss KRONBERG. The garnishee as originally instituted was instituted as a humane method of keeping people out of debtor's prison, but that has long since outlived its usefulness and has become a terrible burden for the poor and only the poor.

The garnishee which was instituted in order to give the working person an opportunity of paying ten percent of his salary instead of having the entire salary attached has long since led to the greatest amount of cheating against the poor, the poor that work.

Outlaw the garnishee, I think, and it will make it unprofitable to maintain this entire establishment that sells in the first place to people who cannot afford what they are buying. In the second place, it would outlaw—and I think this is the most significant part of the entire piece of legislation, it will outlaw the door-to-door salesman.

These persuasive salesmen that take particularly housewives, lonely housewives, who have the opportunity to talk to somebody who flatters her, who persuades her that she can afford $400 worth of encyclopedias or a $60 laminated Bible, or some other piece of merchandise which she doesn't need, she cannot pay for, which is overpriced and which is going to lead her family into impoverishment, for a family of five or six or seven that has never even been led to the public library.

It will do away with this kind of salesman, because this salesman is a garnishee.

If this is the only thing, the threat of garnishee or the garnishee itself is the only thing that makes it feasible, reasonable for him to ring doorbells and get contracts signed.

I had an interesting experience. We have had hundreds of people over the years who on the day after they signed the contract for something they didn't need and wouldn't pay for, they realized, once the salesman had left, that this was a mistake, and they came running to us to see if we could cancel this contract, and every contract clearly states no cancellation of this contract once it is signed.

Well, we go through all of the motions to try to cancel the contract. Sometimes we are lucky and we can buy them back, we can buy them back. We pay, that is the person pays $20 or $10, or more, depending on the size of the purchase.

No delivery has yet been made, no machinery booking or anything has yet taken place.

But in order to get a contract cancelled, when it is possible, the person has to pay something in order to get it back.

But I have one interesting experience. I got a contract cancelled a couple of weeks ago with great ease, and when I got through I wondered what I had said that was different this time from what I had said all the other times to the company I had tried to get the contracts cancelled with.

It was an encyclopedia book company. I made the same pleas, the lady is illiterate, she can't read, she was talked into it. But I had said one more thing. I said this lady is on Social Security, and the difference was that this lady did not have wages that could be garnished and so the company was perfectly willing to cancel this contract, because they couldn't collect.

The only time that they are adamant is when they know they hold the club of garnishee over the purchaser.

We have been trying for a long time to get legislation passed that would alleviate the paying of purchases with garnishees, installment contracts.

Several years ago we persuaded Assemblyman Marx and State Senator Jaffe to introduce legislation. We thought the most important thing, first of all, was to guarantee that a worker would not get fired for receiving a garnishee, because in New York State, up until January 1st of this year, an employer had a right to fire a worker if a garnishee came on the job.

Two years ago we were very happy that the Legislature of New York State, and that particular Legislature approved a bill that allows an employee one garnishee in a twelve-month period.

That was a step forward. At least it protects the job of a man who got one garnishee.

However, we are now working for legislation which, by the way, was supported by the Labor Department, by the Governor, by large numbers of Legal Aid Societies and many other organizations that deal with the problem every day, and that is why this legislation now before the New York State Legislature would make a garnishee available only for that amount, ten percent of that amount above the minimum wage.

The reason that we have to tackle it this way is because there is no Federal legislation or State legislation which outlaws the garnishee.

This claim that this will cut out credit for the poor is true, but I think that is advisable. I think that credit for the poor should not be the function of the private finance company. I think that when we do cut out credit for the poor, as it now functions, we will then be able to deal with the real problem, which is to provide credit for those people who are able to pay on the same basis that we now provide credit for builders, for college scholarships, for a whole myriad of other people who are no more deserving than the man that works, and I think that your legislation, Congressman, will go a long way in this.

Thank you.

The CHAIRMAN. Thank you very much, indeed, Miss Kronberg.

We are grateful for your testimony, and if you have time to stay, perhaps we will have a chance to ask you questions later.

I note Senator Kennedy has a heavy schedule. He was here precisely on time for his appearance and we would like to have him present his testimony now.

Congressman HALPERN. I too want to thank the witness for her fine testimony. I do have a few questions I would like to ask you later, if you will be here.

Miss KRONBERG. I will stay.

The CHAIRMAN. Our next witness is the distinguished Senator from New York, Senator Robert F. Kennedy.

We are very happy to have you here, Senator.

Senator Kennedy, you have given us a very fine prepared statement. I don't know whether you want to go through the whole thing or summarize.

Senator KENNEDY. I won't go through the whole thing, but I would like to read some excerpts of the statement.

Before I begin, Mr. Chairman, I would like to compliment you for the effort you are making in this field. I think it is extremely important, I think the people in the City of New York and the community owe you a great debt.

I would also like to compliment Congressman Halpern, who has always been very active in this field.

The CHAIRMAN. He is a co-sponsor of this Bill.

Senator KENNEDY. I understand that, and I know he has been interested in this legislation for quite a long time.

Mr. Chairman, I also know it would be improper to have this kind of hearing without paying tribute to Senator Paul Douglas who started this kind of legislation back in 1959, and then Senator Proxmire, who carried that on, and then Congresswoman Sullivan from Missouri.

Mr. Chairman, a casual look through the daily papers here in New York City, or in any other American city, on any given day is all one needs to appreciate the importance of the legislation before you today.

STATEMENT OF SENATOR ROBERT F. KENNEDY

Senator KENNEDY. Mr. Chairman and Members of the Committee:

A casual look through the daily papers here in New York City—or in any other American city—on any given day is all one needs to appreciate the importance of the legislation before you today. Auto dealers and department stores,

banks and finance companies, appliance stores and furniture stores—all advertise the ease of buying on credit. The consumer is barraged with a spate of variations on "buy now, pay later": A used car ad invites him to buy on long, low, easy, bank terms. A TV retailer's ad entices him with "No down payment, 24 months to pay." And a bank offers "up to $2,000 just on your signature, a year to repay." But none of the ads tell him just how much this easy credit will cost him.

These advertisements—and the retailing practices they promote—have, of course, been remarkably successful in our affluent society. As more families with more income—3 out of 10 families now earn over $10,000 a year—see more products to choose, they buy, and buy, and buy—and they do it on the installment plan. The amount of credit buying has multiplied seventeen times since the end of World War II, four times in the last fifteen years. Short-term consumer debt is now nearly $100 billion, and when mortgages on one-family and other homes up to 5 units are thrown in, Americans owe well over $300 billion, almost as much as the national debt. Mortgage debts aside, about half the labor force is buying something on the installment plan. And the typical worker spends $1 of every $4 in his pay envelope to pay for the car or television set or refrigerator that he bought on time.

What is wrong with this picture is that the hard-pressed wage earner was never told—either in the advertisement or at the time of sale—the true cost of the credit involved. If more Americans are buying on credit, more are being deceived by misstated finance charges; more are victimized by disreputable lenders and sellers.

Reputable banks here in New York City advertise personal loans at "$5.25 per year, discount, for every $100 you borrow." They do not say that, even though the money is paid back a little each month, the interest charges are calculated as though all of the money is kept by the borrower for the whole year. This doubles the true interest rate from the quoted 5¼ percent, and the word "discount" means that there are added charges which bring it to over 12 percent.

Reputable department stores promote revolving credit plans at a cost of 1½ percent a month. This sounds inexpensive enough—but many do not stop to calculate that this is 18 percent a year, and most do not know that the store's accounting practices may increase the effective rate to a far higher level.

And if reputable institutions understate the cost of credit, or imply that it is less than it is, there are thousands of other stores and dealers who are far less scrupulous. This Committee's files are full of the worst reported cases—the man in Chicago who paid 283 percent interest for a car, the lady who bought a $123.88 TV set for 24 easy payments of $17.50—an interest rate of 229 percent. And the fact is that you and I can shop absolutely at random in any city in the United States and find interest rates—which we must calculate for ourselves, if we are able to—of anywhere from 20 to 50 percent and on up for everything from cars, to furniture, to appliances, to jewelry, to small loans.

We hear much about the fact that the poor pay more—and they do. The most shocking cases of overreaching are generally of poor people, who cannot afford a down payment, are attracted by low monthly payments, and are unsophisticated about the total cost they will end up paying. They fall victim more easily to aggressive salesmanship, to contracts disguised as receipts, to unconscionable collection procedures. And I have no doubt that resentment against exploitation is one of grievances being expressed in the riots which have ripped our cities.

But the failure of banks and department stores and auto dealers to convey all the facts about their credit policies affect almost every American. The suburban housewife and her wage-earning husband must make dozens of decisions every year about how to finance family needs—a new car, a vacation, clothes for the children, a patio in the backyard. Will they take money out of the savings account or sell some stocks or obtain a small loan or obtain a loan on a life insurance policy or buy on credit? Time after time they buy on credit, not realizing that they are paying an annual interest rate of 18 percent, and that it would be much cheaper to take the money out of savings or even to borrow it at a bank. They simply do not know—are not told—enough to make an informed decision about what is, after all, a very complex matter. Indeed, the whole thing is obfuscated for them by a welter of gimmicks—"add-ons," "discounts," "service

charges," "financing charges"—which make it virtually impossible to figure out the total cost of credit. And this is a situation in which literally tens of millions of Americans find themselves.

As a result, few purchasers know what they pay for credit. One survey of families who had borrowed money showed that only 18 percent knew what interest rate they had paid. And, of the ones who borrowed $500 or less, those who knew the rate of interest had paid an average of 12.1 percent; those who did not know the magnitude of the financing charge were paying 37 percent interest, on the average.

The legislation before you today, therefore, is important to every consumer. And consumers, by definition, include us all. Every consumer—hence, every American—needs the information necessary to choose for himself the best way of financing the goods he wants to buy. The right to choose and the right to be informed—those are the rights which H.R. 11601 seeks to protect.

This is particularly important today, when we read that the cost of living is rising sharply. For now, more than ever, people will be tempted to borrow or buy on credit to get the things they want. And, more than ever, if they do not have enough information to decide the best way to finance their purchases, they will fall under the domination of overreaching creditors.

We would not find it acceptable if one car dealer quoted us a price in zlatys, another in lira, and another in deutschmarks, or if, in order to buy a suit of clothes, we had to compare prices quoted in rubles, pounds sterling, and pesos. Yet that—and worse—is the situation regarding consumer credit. Not only must the buyer compare apples and oranges, but he must do so without knowing how many are in each basket. Not only is it as though prices were quoted in different currencies, but it is as though the seller were neglecting to say whether he uses the Mexican or the Spanish peso, the British or the Austrian shilling, the French or the Swiss franc.

What is needed is a simple yardstick, a measure so that comparisons can be conveniently made and competition among sellers of credit will be encourged. The consumer needs the assurance that he will be quoted a rate of interest, the lowest rate of interest which the free play of competition will bring—and that in all instances the rate quoted will mean the same thing: an annual rate, computed on the amounts actually owed.

This is the principle which Senator Douglas fought for so tenaciously, so perseveringly for so many years. This is the principle which motivated Senator Proxmire when he took up the fight this year. It is the principle which was central to the thinking of Congresswoman Sullivan and to your thinking, Mr. Chairman, when H.R. 11601 was drafted. And it is the principle which we must enact into law—this year, while the extraordinary momentum which has developed for this legislation still carries us forward.

Mr. Chairman, I am especially pleased with H.R. 11601. I was pleased, of course, that the Senate passed S. 5 and I think S. 5 is a good bill, but I believe your bill improves upon it in a number of very important ways.

First, the requirement that interest rates on revolving credit plans be stated on an annual basis is, I think, quite important. Revolving credit is now the fastest growing type of consumer credit. More and more department stores are using it, and revolving bank credit card plans are sweeping the country. These plans are so attractive, I think, precisely because they are expressed in terms of a 1½ percent a month charge, and people do not stop to think of that as an annual rate of 18 percent.

If revolving credit is the only exception to the requirement that interest be stated as an annual rate, I think its growth will inevitably be enhanced. And as it is, some have estimated that it will grow to 50 percent of consumer debt within 5 years.

Your record is replete with examples of the confusion people experience about revolving credit. Some stores compute the interest before deducting payments made during the month. Others do not even credit returned merchandise before computing the interest. Some have a 30-day grace period before interest is charged; others do not. Some have a grace period but then charge retroactively to the time of purchase. And from this thicket have emerged retailers as witnesses, who say their quotation of a 1½% monthly interest rate communicates sufficiently to the customer. I find that testimony unsatisfactory, to say the least.

To leave this maze of practices unregulated would be a mistake in my judg-

ment. The annual rate of interest should be stated, so that the buyer can compare. He may discover, to his surprise, that he would be better off getting a bank loan, or that he would be better off buying in a different store. And the buyer should understand when a store will start charging the interest and how the principal amount owed is determined. H.R. 11601 would accomplish these ends. That is a wise aspect of your bill.

Second, your bill extends the requirement of full disclosure to the advertising of credit. This is right, in my judgment. Too many consumers have already made up their mind to buy when they walk into the store in response to an especially captivating advertisement. The ads should state the full truth about financing if they are going to go into it at all.

Third, the bill includes credit charges of under $10. To people who earn $10,000 and $15,000 a year, this point seems less significant, but to a person of modest income the loss of even five dollars to an overcharging seller of credit may mean the loss of a pair of shoes for one of his children. The person who pays a dollar a month for six months while he pays for a $50 chair is paying 48 percent interest, and he deserves to know that.

Fourth, H.R. 11601 extends the disclosure requirement to mortgages. This is important because of the number of ways in which additional finance charges are added through such devices as discounts and points. The potential mortgagee should know what the effective interest rate is. Your bill would insure that he does.

Fifth, the bill prohibits cognovit notes—that is, agreement by the borrower at the beginning that judgment can be entered against him without full legal process if he defaults on the debt. This provision will end a practice which is an open invitation to overreaching and abuse.

Sixth, H.R. 11601 creates a ceiling of 18 percent on interest charges. This is the one provision about which I have reservations. I believe that an 18 percent ceiling would be constructive if we could be certain that it would only be a ceiling. What worries me is that it will become a floor as well—that lenders will automatically begin charging 18 percent unless state law keeps them from doing so. I urge the committee to weigh carefully whether the need for a ceiling when the bill already requires full disclosure, outweighs the danger that the ceiling will also be the floor.

Finally, and most important, in my judgment, the bill takes a significant new step that will protect thousands of families from harassment and even loss of employment. I refer to the prohibition against the garnishment of wages. Garnishment is really the modern equivalent of imprisonment for debt. Particularly for the low-wage worker, it can spell disaster. He may get to work one day and find most of his pay being taken to satisfy a debt or, worse yet, he may find an employer who doesn't care for the clerical burden involved and therefore simply fires him.

This is not an isolated problem. At one steel plant in Chicago, 2,000 deductions are made every payday to satisfy debts. The company says it pays out $500,000 a year to its employees' creditors.

And garnishment leads to bankruptcy. As our American postwar credit buying spree has snowballed, so have personal bankruptcies—from 8500 to 176,000 in 20 years. It seems more than coincidence that the three States (Florida, Pennsylvania, Texas) with prohibitions of garnishment number in the lowest six States in rate of bankruptcy; or that bankruptcies declined by 9% in Illinois after the garnishment exemption was liberalized; or that Iowa experienced a 360% rise in bankruptcies after going from a 100% wage exemption to a $35 a week exemption. In a recent study in Michigan, 75% of bankrupts indicated garnishment was a factor in filing bankruptcy. And you have heard the personal testimony of bankruptcy referees and other experts that the incidence of personal bankruptcy is very much affected by the type of garnishment law which a State has.

Bankruptcies ruin people's lives. They cause permanent psychological damage to family relationships. They cause those creditors who did not hound the debtor to lose everything. They are not very satisfactory for anyone. Ending garnishments would not only protect thousands of individuals, but would protect most creditors as well. The fact is that garnishment is a legal tool often used by the same sellers who sell at unconscionable interest rates in the first place. One study in Milwaukee showed that a third of the over 6700 garnishments in one year were by three establishments. Two stores in Akron, Ohio accounted for twenty percent of the garnishments there.

Ending garnishment might cause overreaching sellers to think twice. And comparisons of States having differing garnishment laws shows that the prohibition would neither discourage legitimate sellers from extending credit nor cause greater losses for sellers.

On the other hand, I do urge you to consider carefully the suggestions that have been made to improve the anti-garnishment provision in the bill:

To protect workers more completely, the prohibition should apply to all personal earnings, instead of just wages, and should include also a prohibition on wage assignments.

To protect legitimate creditors, a ceiling on the exempt income of perhaps $15,000 should be established. High-income people, such as entertainers and executives, do not warrant a total exemption.

It may be, too, that total abolition of garnishment will prove impossible at this time. I strongly urge you, however, to report at least a provision protecting workers from being fired because of a garnishment and establishing a reasonable national wage exemption for garnishment. These provisions would at least do away with the worst abuses.

If we pass H.R. 11601, we will have protected the right of all Americans to buy on adequate information. We will have enhanced the competitiveness of the credit market—and such informed competition will harm only the disreputable loan-shark. And if we succeed in reducing interest rates by even one point on the average, we will save $1 billion a year—cash that can be spent to reduce existing financial burdens or to buy products. In the end we would have stimulated economic growth and improved the allocation of resources in the economy. If we do not pass this law, we turn our backs once again on the consumer; we show once again our indifference to his predicament.

We have this choice. We can abandon the consumer to the finance companies and the merchandisers who prey on his desire for a better life, or we can insure that he has the information he needs to choose intelligently. If the initiative shown by the Subcommittee is matched by the full Congress, we will choose correctly.

I thank you, Mr. Chairman, and I would like, if I may, to have the full statement appear in the record. It was cut, as you can see.

The CHAIRMAN. It certainly will appear.

Senator Kennedy, we are most grateful to you for taking the time to appear here today and give us this testimony.

I think I can say, having sat through a solid two weeks of hearings, morning and afternoon, that this is the most comprehensive and certainly one of the most thoughtful and powerful statements that we have heard, and I think the Subcommittee will benefit greatly by it.

It is very interesting, I think, in your pointing out the type of consumer debts that exist, the interest paid on the consumer debt, the interest paid is about the equivalent of what the Federal Government pays in the way of interest.

I don't have any questions at this time, but I do want to say we really appreciate having you here today.

Senator KENNEDY. Thank you, Mr. Chairman.

Congressman HALPERN. I, too, wish to commend our distinguished Senator for his valuable contribution to our Committee. It is particularly important to us, because of the differences between the weak Senate Bill and the stronger House Bill.

The Senator's analysis and recommendations are more meaningful to our Committee, and I wish to thank him for giving us his time.

Senator, you have contributed invaluably to coming up with an effective answer to meet this vital consumer problem.

Senator Kennedy, the Senate Bill passed on July 11th by a vote of 92 to nothing, as you stated, has many gaps in it which the HR 11601 will close.

Can you promise strong support in Congress if we can pass the bill in the House?

Senator KENNEDY. Congressman, I will use all of the seniority that I have gathered.

Congressman HALPERN. Now, we have heard the suggestion that Truth in Lending legislation will not have a very significant effect on consumer and credit practices, because consumers are just not sensitive to the level of finance charges or credit costs.

If, perhaps, this is true, what educational efforts do you think we can make to make the consumer more aware of this?

Senator KENNEDY. I think if the consumer has not been aware, it is because he hasn't understood the difficulty involved with credit.

I think your Committee is very, very helpful as an educational device here within our own State, and I think more of these hearings can be extremely important, but I think the passage of this bill, the passage of legislation, the people will understand what they have lost over the period of the last several decades.

I think we have a responsibility because we know what the situation is.

It is more difficult for people to know all of the various terms, all of the various devices used to make it more difficult for him to comprehend. I think that is the reason there is less knowledge about the situation at the moment than we would like.

Congressman HALPERN. You said in your statement, I think we must all realize that a great portion of consumer sales are made on the basis of advertisements seen in newspapers, magazines and radio and TV and other news media and disclosure in advertising is probably as important as disclosure at the time of the transaction.

Do you believe that the Truth in Lending Bills could have the desired impact if advertising were not included?

Senator KENNEDY. I think it's very important.

Congressman HALPERN. I should like to reemphasize the major aspects that you mentioned in your testimony on the House bill as opposed to the Senate bill, which requires disclosure of an annual rate by the revolving credit accounts.

Many feel that the entire purpose of the Truth in Lending legislation, which is to enable the consumer to make wise choices and comparisons, would be defeated if this growing sector of the credit industry were not required to disclose the same annual rate yardsticks that all other sources must comply with.

Senator KENNEDY. I agree.

Congressman HALPERN. I think we have had superb testimony and I wish to compliment you on it.

The CHAIRMAN. Thank you again, Senator Kennedy.

We will take a brief recess now of about fifteen minutes before we take any other witnesses.

(Whereupon, a fifteen minute recess was taken.)

The CHAIRMAN. Our next witness is the distinguished Majority Leader of the New York City Council. I want to say that we are grateful to Councilman David Ross for making arrangements for us to have the hearing here in this beautiful chamber and we look forward to having his contribution to the hearing.

We are most grateful to you, Councilman Ross and you may proceed in any way you see fit.

Councilman Ross. It's our pleasure to have you here, Congressman Bingham, my old colleague from Albany, and Congressman Halpern.

I think it's appropriate that you two members of our Congress hold a public hearing here in our august chambers, with reference to consumer protection, because it's historical that many classic pieces of legislation emanated from this chamber.

STATEMENT BY CITY COUNCIL VICE CHAIRMAN DAVID ROSS

Councilman Ross. I appear here today to support the "Truth-in-Lending" proposals now before the Congress.

This legislation has special significance for New York City because of the high percentage of our citizens who are unemployed, under-employed or unemployable. To these people, the dollar has a higher relative value than to those higher on the economic ladder. Yet, these people are the first targets of business practices which foist higher prices and poorer quality on the ghetto and near-ghetto areas.

In the borrowing of money and installment buying, they also become the first victims, not only of the few illegitimate business concerns, but of the duly-licensed and reputable firms which operate fully within the law. Their operations are dependent, principally, on the ignorance of the customer and his inability to obtain needed point-of-sale counseling.

No American city has been more humane in its approach to the problems of the poor than New York. But, New York—though still a dynamic metropolis

and the world headquarters for many industries whose contribution to the national economy is vital and immeasurable—cannot solve the problems of the poor by itself. In fact, the disproportionate burden it carries in the area of fulfilling basic, human needs prevents it from attacking some of the many, purely local problems it faces.

I recognize that ther are still local problems to be solved at the local level, using mainly local funds. But, I also see that in your proposed legislation you recognize that there are national problems affecting the cities that can best be solved nationally using mainly federal funds. I thrust that in the future the Congress will address itself to more of these problems.

I endorse the proposed "Truth-in-Lending" legislation, and I commend Congressmen Bingham and Sullivan for sponsoring it. Its enactment will prove beneficial to a broad spectrum of the American public, but, by inference, it can be seen that the poorer segment of our society will benefit most from it. Poverty is very often accompanied by—and indeed caused by—a lack of education and language barriers.

We have graphic evidence of this in many areas of New York City, including the South Bronx which I have represented in the State Assembly and the City Council for almost two decades. Your bill's full-disclosure provision, its ban on the use of confessions of judgment and Title II, which prohibits garnishment of wages, will help our people in direct proportion to their need for such assistance, as reflected by their economic status. This will hold true for the poor of the South Bronx, the West Side of Chicago and every part of the nation.

These people, while waiting for solutions to be found to their basic problems of education and employment, will continue to reach out, through the media of borrowing and installment buying, for a few of the niceties of living that so many Americans take for granted. Your proposed legislation will help them. As far as New York City is concerned, it will take its place alongside the many consumer-protection laws enacted in this very chamber and be an effective weapon in the most horrid war of all—the economic war that discriminates most against the poor and continually widens the gap between the affluent and the destitute and near-destitute.

I would like to add, Congressman Bingham and Congressman Halpern, I think the mistake that we have all made in this country for too many years is that we don't look upon money as a commodity. It's almost impossible to convince the buying public that when they buy a loaf of bread, when they buy a piece of furniture, when they buy an automobile, they are in the same position as when they take a loan.

If a person were to mark an item at a certain price and try to get a higher price for it, or take advantage of the buying public, there are laws to protect the consumer. Certainly we must have similar protection in the area of borrowing money. That is the commodity that the lender sells. That is the commodity that the borrower buys. Unfortunately, the borrower doesn't realize that when he makes a loan, when he is buying something on time, he is purchasing a commodity, in this instance, the use of money. He has to pay for this.

This is right, but he is entitled to know what he is paying for. I have sat through many a complicated legal transaction in my private practice where I have seen educated people, accountants, who will debate what the actual cost of the money will be. If people with Master's degrees in mathematics are required to compute what the interest rates are on loans, the law is bad.

In fact, there is no law. We speak in terms of six percent interest. It's amazing how six percent interest can become nine percent when it's compounded and you add on some fees. It's amazing how one and a half doesn't add up to eighteen, but it adds up to twenty-five or twenty-six or, if you will, even higher.

Gentlemen, the people that are being hurt the most are those that require the protection the most. I am not concerned here, as I am sure you people aren't, with the person who can go out and afford what he wants to buy and pay for it in cash.

The Truth in Lending bill directs itself, and properly so, to that great segment of the American population that borrows on time. This is a very important segment of our economy, and if people can't borrow on time, our economy will be seriously affected.

Because a person buys on time, is he to be less protected than a person who goes out and buys furniture and pays cash? The answer must be as your bill

is directed, Congressman, because obviously here is where we have the greatest need for protection among the least educated, among those who don't have mathematics degrees.

I think I am reasonably good in mathematics. I can't compute the cost. When I do, I turn around to one of my sons, who is a much finer mathematician, and he comes up with a different figure. Is it fair to ask the consumer public to have less protection than those of us who pay cash?

It's interesting to know that there is so much money in the lending of money that it's common knowledge that certain automobile companies over the years have paid bonuses to their salesmen when they sell a car on time. When you think in the abstract, the contrary would be so, but it isn't that way. They weren't interested in a man coming in and paying $2,400 for a car, when a person buying on time is paying $3,000 or $3,200, and that's financed and added to the top, and service charges and collection of fees. And then there is another gimic, if you will.

You know, we have had many instances in this area and around the country where one of these smaller money lending companies, perfectly legitimate, within the law, perhaps not moral, who makes a $200 loan, and you know, it's not unusual for the legal fees that are written in advance for the collection of that loan to be equal to $100. So we are back again on that revolving door. A person is born in poverty, he borrowers to get some of the minor nicities of life, and he can never climb out.

Many years ago it was made illegal to put a person in jail for debt. It was a debtor's jail, but you know, we haven't come as far as we think. We have these people who are in prison for life. It's amazing.

I spoke to a constituent of mine not long ago, and he went in to buy a rather moderate priced car and came out with one of the very expensive cars that belong only to the affluent. When I pointed out to him that he should not have purchased that car for $6,000, he told me he needed the car for work. I pointed out that a $2,000 or $2,300 car was adequate for him. But the salesman told him the former car would cost him $30 a month to pay for it, and for another $5.00 a month he could buy this car.

Nothing was further from the truth. These people never end up owning their car, because by the time he gets through paying for it, it's ready for the junk yard and the spiral goes on ad nauseum.

Gentlemen, this is an excellent bill. If anything, it's overdue. Then, I am aware of the problems of legislation, how long good legislation may take. I don't think your bill is all-encompassing. It can't be, because too many of the companies involved in the lending of funds are under the control of either Federal or State agencies and whenever you get this bill passed—I hope it will be shortly—and where there are any loopholes, through no fault of yours, I promise you the Council of the City of New York will address itself to those loopholes.

This is good legislation. I want to thank you for presenting it and I trust it will pass in the not too distant future.

The CHAIRMAN. Thank you, Councilman Ross. We are very grateful to you for making this meeting possible in this Council chamber, and we are proud of what New York City is doing under your leadership, and others, to protect the consumer.

Thank you very much.

Congressman HALPERN. I would like to commend the Majority Leader on his perceptive and most informative presentation. You did a superb job and I am sure it will be helpful to us in shaping meaningful legislation.

Councilman Ross. I want you to know, Congressman, that I lived in the South Bronx all my life. There are two types of businesses that have always flourished. One is a pawn shop and the other a lending company. You don't find these in the affluent part of the City. I am sensitive because tonight I will be sitting holding court, if you will, in my community. I can assure you almost as many people with the usual problems of welfare and housing in that type of an area, and it's just amazing how many people come in holding summonses, garnishees, for something they bought four years ago, three years ago, which didn't work because it's legal. It should be corrected.

The CHAIRMAN. Thank you.

I might say that we have a statement from the Council President, Frank E.