

1972

## The Uniform Consumer Credit Code

Gary J. Fisher

Douglas G. Madison

Micheal E. Warren

Follow this and additional works at: [https://scholarship.law.uwyo.edu/land\\_water](https://scholarship.law.uwyo.edu/land_water)

---

### Recommended Citation

Fisher, Gary J.; Madison, Douglas G.; and Warren, Micheal E. (1972) "The Uniform Consumer Credit Code," *Land & Water Law Review*. Vol. 7 : Iss. 2 , pp. 663 - 706.

Available at: [https://scholarship.law.uwyo.edu/land\\_water/vol7/iss2/13](https://scholarship.law.uwyo.edu/land_water/vol7/iss2/13)

This Comment is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Land & Water Law Review by an authorized editor of Law Archive of Wyoming Scholarship.

## LEGISLATIVE COMMENT

### THE UNIFORM CONSUMER CREDIT CODE

On July 1, 1971, the Uniform Consumer Credit Code (UCCC) went into effect in Wyoming.<sup>1</sup> The UCCC was probably the most important piece of legislation passed by the Forty-first State Legislature and undoubtedly the most comprehensive consumer legislation ever passed in Wyoming. The UCCC has, at the very least, brought order to an area of the law which was previously governed by an unorganized mass of case and statutory law. Even if the UCCC has not brought fairness and justice to every aspect of consumer law, it must be recognized as bringing order and reducing confusion.

The Wyoming UCCC is substantially similar to the UCCC promulgated by the Committee on Uniform State Laws. This comment will analyze the UCCC as it exists in its uniform state. It should be assumed that Wyoming's version conforms to the UCCC unless expressed otherwise.

The UCCC consists of seven major divisions. Three of these divisions are merely introductory, procedural or administrative and will not be considered except when necessary to analyze the substantive provisions.<sup>2</sup> Three of the substantive divisions, Articles 2, 3, and 4, deal with credit sales, loans, and insurance, respectively. Within these divisions are the basic provisions regarding disclosure, maximum charges, and limitations on certain practices. Article 5 delineates criminal penalties for violating certain provisions and, more important, sets out creditors' and debtors' remedies and the limitations thereon. Because these four Articles constitute the heart of the UCCC, they will be considered in great detail.

---

1. WYO. STAT. §§ 40-1-101 to -9-103 (Supp. 1971). Hereinafter, unless there is a discrepancy in the provisions, the UNIFORM CONSUMER CREDIT CODE and the WYOMING UNIFORM CONSUMER CREDIT CODE will be referred to as the UCCC. When differences exist, they will be commented on in the text and will be referred to as the UCCC or the Wyoming UCCC respectively. These differences will be cross referenced. Otherwise, it may be assumed that provisions in both Codes are identical. If the title to the Wyoming Statutes citation (§ 40) is disregarded, the numbering of the two codes becomes identical.

2. WYO. STAT. §§ 40-1-101 to -1-303, -6-101 to -6-204, -9-101 to -9-103 (Supp. 1971).

## I. SCOPE OF THE PROVISIONS

## A. Consumer Credit Sales

State laws concerning consumer credit sales have in the past dealt mainly with the types of goods sold or with the methods of financing the sales. The UCCC approach regulates the transactions involved rather than specific creditors or subject matter of the transaction. The consumer credit sale and the consumer loan are the basic transactions covered, and each is treated separately.

A sale is defined as "any passing of title from the seller to the buyer for a price."<sup>3</sup> Credit is "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment."<sup>4</sup> Thus, a credit sale would be any sale for which payment of the price is deferred. The UCCC only regulates consumer credit sales. The comment to the UCCC defines these sales "made by a commercial seller to a [non-commercial] buyer who is a natural person for an amount financed not exceeding \$25,000 (except in the case of land sales) for a personal, family, household, or agricultural purpose."<sup>5</sup> The UCCC requires further that the consumer's debt be either payable in installments or be one for which a credit service charge is made.<sup>6</sup> The credit service charge includes all direct or indirect charges incident to the extension of credit, all expenses incurred in the investigation of the credit worthiness of the buyer, and any commissions due for obtaining credit.<sup>7</sup>

## B. Consumer Leases

The consumer lease provisions cover only leases of personal property which have a duration longer than four months and require payment of an amount less than \$25,000.<sup>8</sup> The

3. UNIFORM COMMERCIAL CODE § 2-106(1) [hereinafter cited as UCC]; cf. UCCC § 1.103.

4. WYO. STAT. § 40-1-301(7) (Supp. 1971).

5. UCCC § 2.104, Comment 1.

6. WYO. STAT. § 40-2-104(d) (Supp. 1971). A single billing by any seller of goods or services does not involve an extension of credit. The familiar one payment bill for a profession person, e.g., dentist, is not regulated.

7. WYO. STAT. § 40-2-109 (Supp. 1971).

8. WYO. STAT. § 40-2-106 (Supp. 1971).

regulation of rates in personal property leases was omitted since most leases do not involve a credit service charge.<sup>9</sup> Any lease with an option to buy is treated as a credit sale if the rental payments are applicable to the option sale price, if the payments substantially equal the value of the goods sold, and if the lessee fully complies with the agreement by which he is to become the owner of the goods.<sup>10</sup> The UCCC provisions concerning leases of personalty provide for disclosure of the lease terms and for the regulation of the lessee's liability at the expiration of the lease period.<sup>11</sup> The latter provision prohibits the use of a "no-loss lease."<sup>12</sup>

### C. Sale of an Interest in Land

The sale of an interest in land or a loan secured by an interest in land is only regulated if the credit service charge exceeds ten per cent per annum.<sup>13</sup> However, the regulation only extends to the requirements of disclosure and to the debtor's remedies.<sup>14</sup> First mortgages on realty are not regulated by the UCCC. The ten per cent figure was chosen to regulate subsequent mortgages since these mortgages normally have higher interest rates than the usual five to eight per cent charged on first mortgages.<sup>15</sup> The sale of an interest in land includes a lease with an option to buy if a substantial amount of the rental payments are applied to the purchase price.<sup>16</sup>

### D. Revolving Accounts

Consumers in today's expanding credit economy utilize two means of open-end transactions which the UCCC regu-

- 
9. UCCC § 2.106, Comment.
  10. UCCC § 2.106; *see* WYO. STAT § 40-2-105(4) (Supp. 1971).
  11. WYO. STAT. §§ 40-2-311, -2-406 (Supp. 1971).
  12. A no-loss lease is an agreement providing that the property leased will be sold at the end of the period with the lessee paying any difference between the depreciated value and the selling price.
  13. WYO. STAT. § 40-2-104(2)(b) (Supp. 1971). Sales of a fractional interest in land are also covered to the extent the service charge exceeds 10% per annum.
  14. WYO. STAT. §§ 40-2-301, -5-201 (Supp. 1971).
  15. Consumer Credit Protection Act, 15 U.S.C. §§ 1601-81 (1970). The Consumer Credit Protection Act applies to all real estate credit regardless of the finance charge. 15 U.S.C. § 1605(e) (1970).
  16. WYO. STAT. § 40-2-105(6) (Supp. 1971).

lates, *i.e.*, revolving charge accounts and revolving loan accounts.<sup>17</sup> Retail stores utilize revolving charge accounts; credit cards involve both revolving charge accounts and revolving loan accounts. The distinction between loan accounts and charge accounts in credit card transactions is dependent upon the type of card used—seller credit card or lender credit card. The revolving charge account involves an agreement between the parties enabling the consumer to make periodic purchases from the seller. At the end of an agreed term the seller bills the consumer who has the choice of paying the complete bill or of making installment payments. The credit service charge is not precomputed at the time of each sale, but instead is computed on the balance due at the end of each period.<sup>18</sup> The revolving loan account constitutes a series of loans.

The Federal Consumer Credit Protection Act makes no express distinction in credit card transactions.<sup>19</sup> The UCCC affords protection to consumers by regulating two types of credit cards presently used: the seller credit card and the lender credit card.<sup>20</sup> The seller credit card (e.g., an oil company credit card) generally is limited to purchases of the issuer's product; the lender credit card can be used where there exists an agreement between the seller and issuer for the use of such card. Lender credit cards include for example BankAmericard, Master Charge, and credit extended by a bank allowing its customer to overdraw his account. If the issuer of the card is also the seller, the transaction is a credit sale.<sup>21</sup> If a transaction, including a sale of goods, is with a lender credit card, it is treated as a loan.<sup>22</sup> In defining the type of credit card used, the UCCC has simplified the necessary distinction between credit sales and loans.

---

17. WYO. STAT. § 40-2-108, -3-108 (Supp. 1971).

18. WYO. STAT. § 40-2-108(3) (Supp. 1971).

19. 15 U.S.C. §§ 1602(k) (1), 1637 (1970).

20. WYO. STAT. §§ 40-1-301(16), (9) (Supp. 1971).

21. WYO. STAT. § 40-1-301(16) (Supp. 1971).

22. WYO. STAT. § 40-3-106(3) (Supp. 1971).

### E. Consumer Loans

The requirements for a consumer loan are the same as those for a credit sale.<sup>23</sup> The loan must be for a non-business or agricultural purpose and for an amount less than \$25,000. The separate treatment of sales and loans is for the most part a matter of form and not substance. The main areas of different treatment occur in the provisions on ceiling rates and contract limitations. The conduct of the creditor constitutes the essential difference between a consumer credit sale and a consumer loan. In a consumer credit sale the creditor transfers goods and services; in the consumer loan the creditor is a lender. In certain transactions the seller and lender can be the same person.<sup>24</sup> Distinctions between credit sales and loans must be made in some cases, but they should be "kept to a minimum in recognition of the diminishing utility—as well as increasing difficulty—of making the distinction."<sup>25</sup>

## II. MAXIMUM RATES

### A. Purposes of Rate Ceilings

The UCCC has made use of rate ceilings in all consumer credit transactions.<sup>26</sup> In the overall structure of the UCCC, however, these maximum rates are of only secondary importance. The UCCC seeks to protect the consumer through the forces of the competitive market. The only purpose of ceiling rates is to set a limit above which no individual rate may be set under any circumstances. The UCCC does not limit or restrict the manner of contracting for a credit service charge in the case of a sale or loan finance charge (in the case of a

23. WYO. STAT. § 40-3-104 (Supp. 1971).

24. For example, a consumer purchases a new car from a dealer and finances it under the dealer's plan.

25. Jordan & Warren, *The Uniform Consumer Credit Code*, 68 COLUM. L. REV. 388 (1968).

26. WYO. STAT. §§ 40-2-201, -2-207, -3-201 (Supp. 1971). For discussions of the maximum ceiling level and disclosure sections see Bailey, *The Substantive Provisions of the Uniform Consumer Credit Code: 20th Century Consumer Protection in a Free Enterprise System*, 29 OHIO ST. L.J. 597 (1968); Curran & Fund, *An Analysis of the Uniform Consumer Credit Code*, 49 NEB. L. REV. 727 (1970); Johnson, *The New Law of Finance Charges: Disclosure, Freedom of Entry, & Rate Ceilings*, 33 LAW & CONTEMP. PROB. 671 (1968); Jordan & Warren, *The Uniform Consumer Credit Code*, 68 COLUM. L. REV. 387 (1968); Kripke, *Consumer Credit Regulation: A Creditor-Oriented Viewpoint*, 68 COLUM. L. REV. 454 (1968); Robertson, *Consumer Credit Protection Under the Uniform Consumer Credit Code*, 41 MISS. L.J. 43 (1969).

loan, as long as the charges do not exceed the various rate ceilings). These established rate ceilings have been set quite high in the hope that they will stimulate creditor competition and reduce the rates to a figure well below the ceilings. Thus the UCCC does not attempt to set the actual rate to be charged in particular cases but leaves the actual rate determination to the forces of supply and demand. This competition is needed because conditions that exist in the market for commercial goods and services do not exist in the consumer credit market. Stated differently, the free competition that exists to fix the cost of groceries has not been available in the past to fix the cost of money.<sup>27</sup>

The UCCC has set up conditions that enable additional lenders to enter the market and to facilitate the ability of present lenders to compete more effectively as well.<sup>28</sup> The legal requirements which a creditor must now meet are designed to enable any reasonable lender to comply with the UCCC.<sup>29</sup> It is hoped that the removal of legal barriers<sup>30</sup> will increase the competition among creditors and, in turn, lower the credit costs to the consumer.<sup>31</sup>

It was possible to have drafted the UCCC as an exception to the usury laws. This would have had the effect of permitting consumer credit to have higher rates while keeping the usury laws operative in nonconsumer credit areas. The UCCC does not follow such an approach, however. The legislature repealed<sup>32</sup> Wyoming's former usury law that limited the contract rate for the use of money to ten per cent per annum<sup>33</sup>

---

27. Jordon & Warren, *supra* note 26, at 389.

28. Curran & Fund, *supra* note 26, at 732.

29. WYO. STAT. § 40-3-503 (Supp. 1971). The only requirements which a lender must now meet in order to become a licensed lender are those of financial responsibility, character and fitness. Furthermore, there are no licensing requirements in credit sales and in nonsupervised consumer loans.

30. WYO. STAT. § 40-3-502 (Supp. 1971). Previously, under WYO. STAT. § 13-490 (1957), legal requirements were more strenuous. Today lenders no longer need to renew their licenses annually, and a licensee only needs to obtain one license to operate several offices in the state.

31. An alternative which the UCCC did not use is the elimination of all licensing requirements. This alternative would increase creditor competition to an even greater extent. The drawback to such an alternative would be that the state would probably have more difficulties in keeping unfair creditors in line because the threat of license revocation would not be present.

32. WYO. STAT. § 40-9-103 (Supp. 1971).

33. Ch. 30, § 5, [1895] Wyo. Sess. Laws 55.

for amounts in excess of \$1000.<sup>34</sup> As a result, the Wyoming usury law no longer exists for any type of credit transaction in which the credit charge is stipulated.<sup>35</sup> However, if no credit charge is expressed, the maximum credit charge is seven per cent per annum.<sup>36</sup>

Under a usury rate such as Wyoming formerly had, often only those who could offer a high probability of repayment of loans in excess of \$1000 were included in the loan market. In many states, people who really needed the money but were unable to get it at the usury ceiling prices then turned to the illegal lender or the "loan shark." If the consumer was forced to look to the illegal lender, he probably could not find a very competitive loan market.

The general usury laws have also failed to protect the consumer credit transaction because of the time-price differential concept which allowed a sale on credit to be made at a higher price than a cash sale. This so called time-price differential was considered a part of the product price and not an interest charge. Consequently, credit sales could have much higher interest rates than loans, and merchants could avoid the usury laws. The rationale for such a doctrine was that there was a basic difference between a purchaser in a sale and a borrower in a loan. The borrower usually had a dire economic need and was therefore subject to rapacious lenders, while the purchaser could always refuse to buy on time without incurring injury.<sup>37</sup> For either reason, the consumer had no practical protection because the rate limits of the usury laws were too low to allow legitimate lenders to operate at a profit. The approach of the UCCC is to make rates high enough so that legitimate lenders may operate at a profit and still charge lower rates than the loan shark.<sup>38</sup> In other words,

34. Ch. 128, § 1, [1945] Wyo. Sess. Laws 146. Wyoming formerly had a small loan act which allowed licensed lenders that were not banks, trust companies, or finance companies to lend borrowers money in amounts up to \$1000. Such lenders could contract for and receive charges at a rate not exceeding 3½ per cent per month on the unpaid balance up to \$150, 2½ per cent per month on the balances from \$150 to \$300, and 1 per cent per month on that part of the unpaid balance from \$300 to \$1000.

35. Wyo. STAT. § 40-9-103 (Supp. 1971).

36. Wyo. STAT. § 13-477 (1957).

37. Christenson, *An Analysis of the Uniform Consumer Credit Code And the National Consumer Act*, 12 B.C. IND. & COM. L. REV. 889, 895 (1971).

38. Bailey, *supra* note 26, at 606.



the draftsmen of the UCCC hoped that the loan market will consequently become more competitive and will allow consumers to shop for their credit. Since people are relatively price conscious when shopping for goods, it is not unreasonable to assume that they will now be price conscious when they are shopping for money.<sup>39</sup>

### B. Ceiling Levels

Consumer credit transactions under the UCCC have been divided into two main categories for the purpose of fixing the ceiling levels. The first of these to be discussed involves transactions which are not made pursuant to a revolving charge account. In the case of nonrevolving consumer credit sales and supervised loans, Wyoming's rate ceilings are identical to those of the UCCC. Both state the maximum credit charge to be the greater of the following: (1) a basic rate of 18 per cent per year, or (2) 36 per cent on balances of \$300 or less, 21 per cent on balances from \$300 to \$1000, and 15 per cent per year on balances in excess of \$1000.<sup>40</sup> The basic reason why the rate ceiling declines is that administrative costs for a small loan are proportionately higher than for a larger loan.<sup>41</sup> On very small transactions the creditor may make a minimum contract charge of not more than \$5 when the amount financed does not exceed \$75 or \$7.50 when the amount financed exceeds \$75.<sup>42</sup>

In nonrevolving credit transactions, the UCCC has distinguished between sellers who impose high credit charges and lenders who impose high loan finance charges. The Wyoming UCCC requires that a lender must be licensed (supervised) before he can impose a finance charge of greater than ten per cent per annum.<sup>43</sup> Lenders can obtain a license

39. Jordon & Warren, *supra* note 26, at 390.

40. WYO. STAT. §§ 40-2-201(2), -3-508(2) (Supp. 1971). The UCCC does away with the term "interest" and only uses monthly or annual percentage rates. This method should reduce the confusion that formerly existed in determining what type of interest was being used, e.g., discount, add-on, or simple interest rates.

41. Jordon & Warren, *supra* note 26, at 401. The clerical cost becomes a smaller part of the charge as the credit amount increases.

42. WYO. STAT. §§ 40-2-201(6), -3-201(6) (Supp. 1971).

43. WYO. STAT. §§ 40-3-501, -3-502 (Supp. 1971).

if the administrator finds that the lender's business will be operated under the rules of honesty and fairness required by the UCCC.<sup>44</sup> Thus, a licensed lender in Wyoming can lend at the maximum amount of the rate ceilings while the unlicensed lender is limited to a ceiling of only ten per cent per annum.<sup>45</sup> One difference between the UCCC and Wyoming's version is that Wyoming's unlicensed lenders are subject to the ten per cent limit while under the UCCC unlicensed lenders can charge up to 18 per cent per annum.<sup>46</sup> Consequently, it is more beneficial for a lender in Wyoming to become licensed than in states that adopt the UCCC rates.

The second main category used to fix the ceiling levels under the UCCC is the credit sale or loan made pursuant to a revolving credit transaction. The only real difference between a credit sale employing revolving credit and one that does not is the method of calculating the credit charge. If the credit charge is computed on the basis of the consumer's unpaid balance, it is a revolving credit transaction; if the charge is precomputed and added to the cash price, it is a nonrevolving transaction.<sup>47</sup> A revolving loan account is slightly different.<sup>48</sup> In a revolving loan the parties arrange to make a series of loans instead of a single loan as in a nonrevolving transaction. The parties may also agree to add the unpaid balance of nonrevolving consumer loans to the revolving loan account.<sup>49</sup>

Wyoming's UCCC has established different rate ceilings for revolving credit transactions than those of the UCCC.<sup>50</sup> The ceiling in Wyoming is always 1½ per cent per month or 18 per cent per annum on the unpaid balance of a credit sale<sup>51</sup> and only 5/6 of one per cent per month or ten per cent per

44. WYO. STAT. § 40-3-503 (Supp. 1971).

45. WYO. STAT. §§ 40-3-201, -3-508 (Supp. 1971). These percentages are calculated according to the actuarial method on unpaid balances of the principal.

46. UCCC § 3.201.

47. WYO. STAT. § 40-2-108 (Supp. 1971).

48. WYO. STAT. § 40-3-108 (Supp. 1971).

49. WYO. STAT. § 40-3-207 (Supp. 1971).

50. UCCC §§ 2.207, .201(4). Under the UCCC the maximum credit charge for a revolving sales account is 2 per cent per month of the unpaid balance up to \$500 and 1½ per cent per month on any amount over \$500. In the case of a credit loan, the charge is always 1½ per cent per month of the unpaid balance.

51. WYO. STAT. § 40-2-207(3) (Supp. 1971).

annum on the unpaid balance in a credit loan.<sup>52</sup> These rates apply in each billing cycle if the billing is monthly. A proportionate charge is made for other than monthly cycles.<sup>53</sup>

The UCCC allows the unpaid balance of the debt to be calculated by one of three different methods. One such method, the typical credit card plan, provides that a bill be sent once a month and that the charge be based upon the amount of the debtor's monthly credit transactions.<sup>54</sup> A second method is one in which the unpaid balance is the balance on a predetermined day of each month.<sup>55</sup> The final method is a type of bracket system which applies an unvarying dollar credit charge for all amounts within a specified range of balances.<sup>56</sup>

### C. Additional Charges

In addition to the finance or service charge permitted, the lender or seller may contract for and receive certain additional charges.<sup>57</sup> These charges include official fees and taxes, charges for insurance, closing costs, and reasonable charges for other benefits conferred upon the debtor which are of value to him in connection with the credit sale or loan. Perhaps the UCCC would be more beneficial in this area if it had been more specific as to what these other benefits might entail. An additional charge for the privilege of using a credit card may also be allowed in the case of a loan.<sup>58</sup>

### D. Delinquency, Deferral, and Refinancing Charges

Certain other charges may be contracted for by the parties in a precomputed sale or loan. Delinquency charges are

52. WYO. STAT. § 40-3-201(4) (a) (Supp. 1971).

53. WYO. STAT. §§ 40-3-201(4) (b), -2-207(3) (Supp. 1971).

54. WYO. STAT. §§ 40-3-201(4) (a) (i), -2-207(2) (a) (Supp. 1971).

55. WYO. STAT. §§ 40-3-201(4) (a) (ii), -2-207(2) (b) (Supp. 1971).

56. WYO. STAT. §§ 40-3-201(4) (a) (iii), -2-207(2) (c) (Supp. 1971). An example of this method would be where the creditor would charge \$10 for all balances between \$92.40 and \$107.60. For computation of an allowed understatement see note 99 *infra*. This flexibility should prove to be quite convenient to both sellers and consumers for the seller can adapt the proper method to the appropriate credit transaction. Thus, computation will become simplified and the computational costs should decrease.

57. WYO. STAT. §§ 40-3-202, -2-202 (Supp. 1971).

58. WYO. STAT. § 40-3-202(1) (c) (Supp. 1971). Examples of this type of card are the credit cards put out by loan companies.

allowed for installments that are not paid on the due date. The UCCC authorizes a delinquency charge on any installment not paid in full within ten days of its due date amounting to five per cent of the unpaid amount up to a \$5 maximum charge. This charge may be collected only once on any one installment.<sup>59</sup> Delinquency charges are reasonable since a delinquent debtor causes the creditor to incur additional expenses for which he should be compensated. Other than these delinquency charges, any allowable attorney fees, and reasonable expenses incurred in realizing a security interest, no default charges are allowable under the UCCC.<sup>60</sup>

Deferral charges are made for the privilege of deferring payment of one or more of the unpaid installments. Under these agreements, the debtor is extending the period of his credit and the creditor should be allowed to make an additional charge for this extension. The maximum charge for a deferral may not exceed the rate previously disclosed to the buyer and cannot be used to increase the rate of finance charge paid by the consumer.<sup>61</sup>

Charges are also allowed when the parties to a consumer credit sale or loan agree to refinance a single transaction<sup>62</sup> or when a new credit sale or loan is consolidated with a prior transaction.<sup>63</sup> These additional charges may also be made when the creditor makes an agreement to perform certain duties normally required of the consumer regarding insurance or the preservation of the collateral.<sup>64</sup> These types of charges are in the nature of a fee for additional services which the creditor extends to the debtor. The creditor should be reimbursed for such services.

#### E. Payment: Right to a Rebate

The UCCC gives the consumer the right to prepay in full any consumer debt at any time without incurring a

---

59. WYO. STAT. §§ 40-2-203, -3-203 (Supp. 1971).

60. WYO. STAT. §§ 40-2-414, -3-405 (Supp. 1971).

61. WYO. STAT. §§ 40-2-204(1), -3-204(1) (Supp. 1971).

62. WYO. STAT. §§ 40-2-205, -3-205 (Supp. 1971).

63. WYO. STAT. §§ 40-2-206, -3-206 (Supp. 1971).

64. WYO. STAT. §§ 40-2-208(1), -3-208(1) (Supp. 1971).

penalty.<sup>65</sup> Upon prepayment in full of the unpaid balance of a precomputed credit sale or loan, a refund of the unearned credit charge shall be based on the *Rule of 78's*.<sup>66</sup> The same prepayment rule applies to refinancing or consolidation transactions.<sup>67</sup> This rule has led to much confusion in the past because people have often assumed that, if a 12 month installment contract is paid in full at the end of six months, only one-half of the finance charge has been earned and the other one-half should be rebated. The *Rule of 78's* produces a lesser rebate on the reasoning that the consumer has the use of money actually belonging to the creditor and he should pay more interest when he has more of the creditor's money. Thus, more interest is earned in the early months when more money is in the consumer's use than in later months.<sup>68</sup>

## F. Conclusion

The adoption of the UCCC may have a substantial effect upon the credit market in Wyoming. By adopting rate ceilings and repealing the general usury statute, the door to reasonable credit rates may be opened to many borrowers who were shut out in the past. Hopefully, this new opening into the credit market will prove to be beneficial. It must be kept in mind, however, that the key to the success of this new Act will be in the hands of the consumer himself. It is only by the consumer's diligent selection of credit that competition among the various creditors will arise and eventually lower the cost of this credit.

---

65. WYO. STAT. §§ 40-2-209, -3-209 (Supp. 1971). There is no right to a prepayment on a sale of an interest in land in which the credit service charge does not exceed 10 per cent per annum since such a sale is not a consumer credit sale. This section does not give a consumer the right to make a partial prepayment.

66. WYO. STAT. §§ 40-2-210, -3-210 (Supp. 1971).

67. WYO. STAT. §§ 40-2-210, -3-210 (Supp. 1971).

68. Kripke, *Consumer Credit Regulation: A Creditor-Orientated Viewpoint*, 68 COLUM. L. REV. 454 (1968). The following problem is an example of the *Rule of 78's*: X purchases a car for \$1200 with a \$78 service charge. He pays \$100 per month and thus he has the use of 12, \$100 bills that actually belong to the creditor at the outset of the transaction. In the first month the creditor earns 12/78 of the financial charge, in the second month he earns 11/78, etc. Thus, at the end of 6 months, the creditor has earned 57/78 of the finance charge, and the buyer gets back a rebate of \$21 on a full prepayment at this time.

### III. DISCLOSURE

Wyoming was perhaps in more need of a provision dealing with disclosure of credit than many other states. Before the promulgation of Regulation Z pursuant to the Truth in Lending Act in 1969,<sup>69</sup> Wyoming had virtually no disclosure requirements. Thus, disclosure in Wyoming for all practical purposes is an entirely new area in credit transactions.<sup>70</sup>

The Federal Consumer Credit Protection Act went into effect on May 29, 1968.<sup>71</sup> Disclosure of the cost of credit by all creditors in terms of a single annual percentage rate is one of its most prominent features.<sup>72</sup> However, the federal act provides that creditors in any state having substantially similar disclosure requirements and adequate provisions for their enforcement may be exempted from the federal rules.<sup>73</sup> There are only a few differences between the disclosure requirements of the federal statute and the UCCC. The federal act does not distinguish between consumer sales and loans;<sup>74</sup> the UCCC does.<sup>75</sup> The federal act speaks in terms of a finance charge<sup>76</sup> which every creditor must use on his disclosure statements; the UCCC divides this category into a loan finance charge, in the case of a loan,<sup>77</sup> and a credit service charge, in the case of a sale.<sup>78</sup> The UCCC includes within the term service charge, "charges incurred for investigating the collateral or credit-worthiness of a debtor."<sup>79</sup> The federal act omits these charges from its definition of the finance charge on extensions of credit secured by an interest in real property.<sup>80</sup> These distinctions should not create any real problems,

69. 12 C.F.R. § 226 (1970).

70. None of Wyoming's newly adopted disclosure provisions are substantially different from those employed by the UCCC.

71. 15 U.S.C. § 1601 (1970).

72. 15 U.S.C. § 1631-41 (1970).

73. 15 U.S.C. § 1633 (1970). The Federal Reserve Board has made it quite clear that it does not intend to grant exemptions to any state which does not have a strong administrator who can enforce the disclosure provisions of the UCCC. See UCCC, Prefatory Note at XXIX.

74. 15 U.S.C. § 1605(a) (1970).

75. WYO. STAT. §§ 40-2-101 to -2-605, -3-101 to -3-605 (Supp. 1971).

76. 15 U.S.C. § 1605(a) (1970).

77. WYO. STAT. § 40-3-201(1) (Supp. 1971).

78. WYO. STAT. § 40-2-201(1) (Supp. 1971).

79. WYO. STAT. §§ 40-2-109, -3-109 (Supp. 1971).

80. 15 U.S.C. § 1605(e) (1970).

however, for the Wyoming UCCC is still substantially similar to the federal act even with these discrepancies. Thus, as long as Wyoming enforces the disclosure provisions of the UCCC, Wyoming creditors should not have to worry about the federal act.<sup>81</sup> However, it must be remembered that it is difficult to appraise the significance of such differences in the absence of operating experience, and there is a possibility that particular transactions affected by the differences might not be eligible for exemption from federal requirements.

The method of disclosing the comparative cost of credit available to a consumer has been a major concern of all current consumer legislation. If competition is to function properly in the credit market, it is necessary that consumers be given enough information to enable them to decide intelligently whether to use credit and from whom to obtain it. The disclosure provisions in the UCCC<sup>82</sup> are the primary devices used to increase the consumer's awareness and knowledgeability about credit costs.

One of the functions of the UCCC is to standardize all consumer credit transactions in the various jurisdictions. As long as the benefit of comparative disclosure of credit costs is greater than the economic costs of compliance with such disclosure requirements, standardization is desirable for both consumers and creditors.<sup>83</sup>

The disclosure provisions of the UCCC are contained in two main divisions: the sections dealing with installment sales or loans other than revolving credit, and the sections dealing with revolving credit. Disclosures in both divisions serve either to inform the consumer of the terms of the contract before he enters into the obligation or to inform the consumer of his rights and duties resulting from an agreement already consummated. Disclosure provisions only apply when the principal, in the case of loans, or the amount financed, in the

---

81. WYO. STAT. §§ 40-2-301(2), -3-301(2) (Supp. 1971).

82. WYO. STAT. §§ 40-2-301(1) to -2-301(13), -3-301(1) to -3-301(12) (Supp. 1971).

83. The benefits of disclosure will not be a gift to the consumer for the creditors will undoubtedly pass disclosure costs on to the consumers by way of increased product prices.

case of sales, is less than \$25,000.<sup>84</sup> This limitation reflects the idea that consumers who are able to deal in larger transactions can fend for themselves in the credit market.

#### A. Nonrevolving Credit Transactions

All disclosures must be made clearly and conspicuously so that a reasonable person ought to notice them.<sup>85</sup> Such disclosures must be made prior to or contemporaneously with a credit sale or loan.<sup>86</sup> The UCCC requires that the creditor disclose to the debtor:<sup>87</sup>

a. a description or identification of the property or services sold;

b. in a sale, the cash price, the amount of down payment, and the balance remaining after a down payment. In the case of a loan, the creditor must disclose the net amount paid to the debtor;

c. the costs of registration and certification of title or license fees if not included in the cash price or loan amount, as well as a description of those fees in both loans and sales;

d. a description of insurance provided and the amount of the accompanying charge if a separate charge is made;

e. the amount of official fees if not included in the cash price;

f. a description of any additional charges;

g. the amount financed, in the case of a sale, or the principal amount, in the case of a loan;

h. a schedule of installment payments;

i. a description of any security interests acquired by the creditor in connection with the extension of credit.

After this information has been given, the credit service charge or loan finance charge and the annual percentage rate

84. WYO. STAT. §§ 40-2-104(1)(e), -3-104(4) (Supp. 1971).

85. WYO. STAT. §§ 40-1-301(6), -2-302(1)(a), -3-302(1)(a) (Supp. 1971).

86. WYO. STAT. §§ 40-2-302(2)(a), -3-302(2)(a) (Supp. 1971).

87. WYO. STAT. §§ 40-2-302(1), -3-302(1) (Supp. 1971).



must be disclosed.<sup>88</sup> Some additional provisions of the UCCC require disclosure when there is a refinancing of an existing credit,<sup>89</sup> consolidation of credits,<sup>90</sup> or deferment of one or more payments.<sup>91</sup> Disclosure is also required when installment loans are made pursuant to a credit card<sup>92</sup> and when a consumer lease which is payable in installments is executed.<sup>93</sup>

If a sale is made by telephone or mail, the required disclosure may be made before the credit is extended or by distributing printed material to the consumer which contains the pertinent information.<sup>94</sup> The sale must then be followed with specific disclosure before the first payment is due.<sup>95</sup> When a loan is arranged by mail, disclosure may be delayed until the date of the first payment if the creditor has given the debtor sufficient information concerning the terms of the loan.<sup>96</sup>

The Administrator may authorize the use of rate tables to aid creditors in determining the loan finance charge or service charge on a nonrevolving charge account.<sup>97</sup> Creditors may then impose the same finance charge for all balances within a certain range.<sup>98</sup> The UCCC will permit an understatement of the rate in this case by as much as eight per cent.<sup>99</sup>

An annual percentage rate may be deceptively large on short term contracts. An example would be the purchase of a \$10 toaster for \$1 down, and \$1 a week for ten weeks. Here

88. WYO. STAT. §§ 40-2-304(1), -3-304(1) (Supp. 1971).

89. WYO. STAT. § 40-2-307 (Supp. 1971).

90. WYO. STAT. §§ 40-2-308, -3-307 (Supp. 1971). These sections refer to consolidation of the amount owed on a previous credit sale or loan with a current credit sale or additional loan.

91. WYO. STAT. §§ 40-2-309, -3-308 (Supp. 1971).

92. WYO. STAT. § 40-3-310 (Supp. 1971). This section requires basic disclosure of the rate and any additional charges before a credit card installment loan is made.

93. WYO. STAT. § 40-2-311 (Supp. 1971).

94. WYO. STAT. §§ 40-2-305, -3-305 (Supp. 1971).

95. WYO. STAT. § 40-2-305 (Supp. 1971).

96. WYO. STAT. § 40-3-305 (Supp. 1971).

97. WILLIER & HART, CONSUMER CREDIT HANDBOOK 426-602 (1969). This handbook contains excellent tables for calculating credit service rates.

98. See note 56 *supra* and accompanying text.

99. WYO. STAT. §§ 40-2-304(5) (b), -3-304(5) (b) (Supp. 1971). An example of and understatement would be if the actual rate on a contract were 18 per cent, the quoted rate could not be less than 16.56 per cent (18- (.08x18)).

the annual percentage rate would be 102 per cent.<sup>100</sup> Nevertheless, because the credit is outstanding for such a short period of time, a statement of the dollar charge is more meaningful. The UCCC states that only the dollar amount of the finance charge has to be disclosed on transactions where the finance charge does not exceed \$5 on amounts financed not exceeding \$75, or \$7.50 on amounts financed exceeding \$75.<sup>101</sup>

### B. Revolving Charge Accounts

As previously stated, the two most common examples of revolving credit are the revolving charge accounts of retailers and the credit card.<sup>102</sup> In each of them there is a continuing relationship between the creditor and the debtor.

In a nonrevolving credit account, the use of tables facilitates the computation of complex interest rates when credit is of a fixed amount and payable in equal amounts in equal installments. However, calculation of an accurate rate on an annual percentage basis is impossible when a revolving credit account is used because of the many variables that are present. In most revolving credit accounts there is no service or loan finance charge when payment is made within a stated period of time, *e.g.*, 25 days from the receipt of the bill. After this period has elapsed, a service charge is computed at a certain rate, such as 1½ per cent per month on the unpaid balance for that month. Thus, the annual amount of service charge will vary from month to month depending on the number of purchases the debtor has made on his revolving charge account.

The UCCC recognizes the fact that making accurate advance disclosures by way of an annual percentage rate in these revolving accounts is impossible. Therefore, it only requires disclosure when the account is opened.<sup>103</sup> The disclosures required are the conditions under which a finance charge is

100. Johnson, *The New Law of Finance Charges: Disclosure, Freedom of Entry, & Rate Ceilings*, 33 LAW & CONTEMP. PROB. 671 (1968). The annual percentage is estimated from a direct ratio formula which provides an estimate of the true actuarial rate. The rate quoted is a nominal annual rate, that is, the weekly rate multiplied by 52.

101. WYO. STAT. §§ 40-2-306(2) (k), -2-313(2), -3-306(2) (h), -3-312(2) (Supp. 1971).

102. WYO. STAT. §§ 40-2-108, -3-108 (Supp. 1971).

103. WYO. STAT. §§ 40-2-310(1), -3-309(1) (Supp. 1971).

made, the method of computation, and the description of any additional charges.<sup>104</sup> The monthly percentage rate and the equivalent annual percentage rate must usually be given as well.<sup>105</sup> When each monthly billing is made, the same information plus an itemized account of the consumer's purchases must be given.<sup>106</sup> In sum, revolving credit disclosure basically complies with the UCCC if it only gives the conditions under which a charge is made and the monthly rate multiplied by 12.

### C. Advertising

The manner in which terms are used in advertising credit transactions is subject to regulation. The UCCC prohibits the use of false or misleading advertising concerning the terms and conditions of credit sales or loans.<sup>107</sup> It is only when creditors make statements about charges in their advertisements that they must conform to the disclosure provisions of the UCCC.<sup>108</sup> The UCCC states that any advertisement concerning the rate of credit charges is prohibited unless it is expressed as an annual percentage rate.<sup>109</sup> Sellers can no longer advertise that their credit service charge is so much per \$100 per year but may only advertise the equivalent annual percentage rate.<sup>110</sup> Also, sellers can no longer say, for example, "Own a new color television for only \$50 per month." If the amount of the installments is expressed in the advertisement, the number of installments and the rate of credit charge must also be stated.<sup>111</sup> Thus, the UCCC tries to prevent deception brought about by incomplete advertising.<sup>112</sup>

### D. Intent and Effectiveness

The intent of the UCCC is to increase market competition among creditors by increasing the consumer's awareness of

104. WYO. STAT. §§ 40-2-310(1), -3-309(1) (Supp. 1971).

105. WYO. STAT. §§ 40-2-310(1), -3-309(1) (Supp. 1971).

106. WYO. STAT. §§ 40-2-310(2)(b), -3-309(2)(b) (Supp. 1971).

107. WYO. STAT. §§ 40-2-313(1), -3-312(1) (Supp. 1971).

108. WYO. STAT. §§ 40-2-313(2), -3-312(2) (Supp. 1971).

109. WYO. STAT. §§ 40-2-313(2)(a), -3-312(2)(a) (Supp. 1971).

110. This calculation is based on a contract providing for the payment of the amount financed and the credit service charge in 12 equal monthly installments.

111. WYO. STAT. §§ 40-2-313(2)(b), -3-312(2)(b) (Supp. 1971).

112. Jordon & Warren, *The Uniform Consumer Credit Code*, 68 COLUM. L. REV. 417 (1968).

the cost of credit. Creditors will be forced to consider this increase in consumer awareness as they establish their rate schedules or advertise information about their credit costs. In the long run, the general cost of credit may be lower because of the consumer's increased sensitivity to credit costs.

At the present time, disclosure may not be quite as effective as the draftsmen of the UCCC had hoped. The drafters chose the primary instrument for disclosure to be the contract itself.<sup>113</sup> Consequently, the UCCC's practical beneficial effect in helping the consumer make a prudent and informed decision about incurring a particular obligation might be somewhat diluted. A consumer might feel that he has somewhat committed himself before he actually signs his name, even though a consumer incurs no legal obligation until signing. After he has signed the contract, the consumer can change his mind only in a home solicitation sale<sup>114</sup> and in certain credit extensions secured by an interest in land.<sup>115</sup> Credit cards present a different problem; people are not inclined to read the required disclosures until they receive their monthly bill. This, however, is the consumer's own fault.

Disclosure requirements are an improvement over what existed in the past. But until the consumers themselves take full advantage of these requirements and shop for their credit, these disclosure provisions will not be as effective as hoped.

#### IV. LIMITATIONS ON AGREEMENTS AND PRACTICES

##### A. Negotiable Instruments and Defenses

The use of negotiable instruments in consumer credit transactions has been abused. In the usual tripartite credit sale, the seller negotiated the consumer's note to a third party who succeeded to the right to the payments. If circumstances then arose which gave the consumer a personal defense, he would usually be unable to refuse payment on the note. The consumer's inability rested on at least one of two bases: that

113. WYO. STAT. §§ 40-2-302(2) (a), -3-302(2) (a) (Supp. 1971).

114. WYO. STAT. § 40-2-502 (Supp. 1971).

115. WYO. STAT. § 40-2-407 (Supp. 1971).

the holder of the note was a holder in due course or that there was a waiver of defense clause in the sales agreement. The consumer had recourse against the seller by bringing a contract or tort action. However, often the amount disputed was not large enough to justify the cost of litigation.<sup>116</sup>

Treating the holder of the note as a holder in due course is justified on the premise that a "high volume of economic exchange is a prime social desideratum."<sup>117</sup> If the consumer's personal defenses were available against the holder, the number of transactions would decrease. The justification has recently been discredited. The Uniform Commercial Code has left the determination of whether to subject the holder to the consumer's defenses in the hands of the individual states.<sup>118</sup> It has been shown that "consumer paper passes from the dealer to financier as readily in states that subject the assignee to defenses as in states that do not."<sup>119</sup> The modern trend seems to be toward limiting the use of both concepts.<sup>120</sup> If their use is limited, it is generally felt that the reduction in transactions will be slight and the resulting impairment will be for the betterment of commerce.

### 1. *Holder in Due Course*

A check is the only form of negotiable instrument allowed by the UCCC to evidence the consumer's obligation to the seller.<sup>121</sup> If the consumer is the payee rather than a maker of a note, the note may be used because it is not evidence of the consumer's obligation but only payment of his debt.<sup>122</sup> A purchaser of a note may be a holder in due course even though the seller took it in violation of the UCCC. The UCCC uses the holder in due course concept to protect bona fide pur-

116. Murphy, *Another "Assault upon the Citadel": Limiting the Use of Negotiable Notes and Waiver-of-Defense Clauses in Consumer Sales*, 29 OHIO ST. L.J. 667, 693 (1968).

117. *Id.* at 668.

118. UCC § 9-206(1); Jordan & Warren, *supra* note 112, at 434.

119. Jordan & Warren, *supra* note 112, at 436.

120. Kripke, *Consumer Credit Regulation: A Consumer Oriented Viewpoint*, 68 COLUM. L. REV. 469 (1968).

121. WYO. STAT. § 40-2-403 (Supp. 1971).

122. For example, A gives B a negotiable note for an obligation A owes B. B then decides to purchase a new car. Under the UCCC B can give the car dealer A's note in payment for the car.

chasers<sup>123</sup> and adopts the Uniform Commercial Code's tests of good faith and notice.<sup>124</sup> However, the UCCC extends the good faith requirement by stating that a holder will not be in good faith if he takes a negotiable note with knowledge at the time of the transfer that it was issued in a consumer credit transaction.<sup>125</sup> An exception to this good faith requirement is made for second or third takers who do not know of the paper's origin.<sup>126</sup>

It must be kept in mind that these restrictions on holders do not apply to open-end transactions, *e.g.*, credit cards.<sup>127</sup> The issuer of such cards takes free of consumer defenses. It should also be noted that notes are not prohibited when the sale is for agricultural purposes.<sup>128</sup>

## 2. *Waiver of Defense Charges*

The other method used by sellers and purchasers of commercial paper to escape the consumer defenses has been the insertion of a clause in the sales agreement which waives any defenses against assignees under the contract. The Wyoming UCCC gives rather limited protection to the consumer when waiver of defense clauses are used.<sup>129</sup> After the assignment has been made and the assignee has given notice of the transfer to the consumer, the consumer has 45 days in which to return notice to the assignee of any claims or defenses he has against the seller. The notice given by the assignee must be in writing and must identify the contract, the goods or services sold, the parties involved and their correct addresses, and the amount due at that time. If the holder does not receive any notice, he "will have the right to enforce the contract free of any claims or defenses the buyer or lessee may have against the seller or lessor which have arisen before the end of the 45 day period after which notice was mailed."<sup>130</sup> The con-

123. WYO. STAT. § 40-2-403 (Supp. 1971).

124. UCC § 3-302.

125. WYO. STAT. § 40-2-403 (Supp. 1971).

126. UCCC § 2.403, Comment.

127. WYO. STAT. § 40-2-403 (Supp. 1971).

128. *Id.*

129. WYO. STAT. § 40-2-404 (Supp. 1971). *But see* UCCC § 2.404, Alternative A. The UCCC provides a 90 day time limit for the consumer's notice.

130. WYO. STAT. § 40-2-404(1) (Supp. 1971).

sumer may assert against the assignee any claim arising after the 45 day period.<sup>131</sup> The burden is thus placed upon the consumer to ascertain what defenses or claims he has against the seller before the transfer.

The UCCC provides that until the notice is given by the assignee, the consumer is authorized to pay the original seller.<sup>132</sup> Upon request by the consumer, the assignee must identify the rights assigned and furnish proof of the assignment.<sup>133</sup> The waiver of defense section also requires the assignee to take in good faith.<sup>134</sup> The good faith requirement provides that the assignee must not have knowledge of substantial complaints, including failure of consideration or neglect in repairing product defaults, in any of the seller's prior transactions. The consumer can only assert his defenses as a set off when the assignee sues to recover the balance due him.<sup>135</sup>

Waiver of defense clauses have caused serious problems to the consumer. They are usually hidden in a standard form agreement and the consumer is usually unaware of their consequences. The consumer does not know what defenses he has or against whom they can be asserted. Finally, the consumer may incur a legal expense in order to ascertain his position. In trying to retain the free flow of transactions, the drafters and legislators have failed to adequately protect the consumer who waives his defenses in a sales agreement. The burden should not be placed upon the consumer in order to protect his personal rights but rather upon the seller and assignee who are aware of the laws. The better alternative (which Wyoming rejected) would make the assignee subject to all consumer defenses regardless of a waiver clause to the contrary.<sup>136</sup> It would force banks, loan companies, and other financiers to screen those they finance more carefully. Also, these financiers could arrange for reimbursement from the

---

131. UCCC § 2.404, Comment.

132. WYO. STAT. § 40-2-412 (Supp. 1971).

133. *Id.*

134. WYO. STAT. § 40-2-404(2) (Supp. 1971).

135. WYO. STAT. § 40-2-404(3) (Supp. 1971).

136. UCCC § 2.404, Alternative A.

sellers by taking an assignment with recourse or through the use of reserve accounts.<sup>137</sup>

### B. Security Provisions

A seller is allowed to take a security interest in the property sold pursuant to a consumer credit sale. He cannot take as collateral any other property of the consumer unless services are performed on the goods or the merchandise sold is installed or annexed to other goods, the total debt being more than \$300; the goods sold become affixed to land or land has been maintained, repaired, or improved as a result of the credit sale, the total amount due being over \$1,000.<sup>138</sup> Thus, the seller is limited to a purchase money security interest in the goods sold unless the goods or services become closely connected with other property.<sup>139</sup>

The UCCC only regulates those transactions dealing with the sale of land when the credit service charge is ten per cent or more per annum.<sup>140</sup> The seller's security interest is limited to the land involved in the credit sale. Security interests taken in agricultural sales or leases are not limited.<sup>141</sup> However, a security interest taken in other property of the lessee in a *nonagricultural* lease is prohibited.<sup>142</sup>

The UCCC permits a seller to take a security interest in other property which the consumer has bought or will buy from the same seller. However, two restrictions are placed on the seller.<sup>143</sup> He must consolidate the debts so that the buyer gets a lower rate of interest when the credit service charge is figured,<sup>144</sup> and each payment on the debt must be applied on a

137. Murphy, *Another "Assault Upon the Citadel": Limiting the Use of Negotiable Notes and Waiver-of-defense Clauses in Consumer Sales*, 29 OHIO ST. L.J. 667 672 (1968).

138. WYO. STAT. 40-2-407 (Supp. 1971).

139. This allows an artisan to take a mechanics lien on the property.

140. WYO. STAT. § 40-2-104(2) (b) (Supp. 1971).

141. WYO. STAT. § 40-2-407 (Supp. 1971).

142. WYO. STAT. § 40-2-407(2) (Supp. 1971).

143. WYO. STAT. § 40-2-408(1) (Supp. 1971).

144. WYO. STAT. § 40-2-408(2) (Supp. 1971). An example is when a buyer purchases a refrigerator for \$250 and a stove for \$275. He must combine the two for a total of \$525 for which a 21 per cent rate of interest is allowed, rather than a 36 per cent rate allowed for each if separate.



first-in-first-out basis.<sup>145</sup> The seller must also release his security interest in each item as payment on that item is completed.<sup>146</sup> The UCCC's treatment of the seller regarding the use of cross collateral might seem harsh because all the goods are depreciating. Nevertheless, it must be remembered that it was the seller's decision to take this form of security. On the other hand, if the seller refuses to take a cross collateral interest in the goods sold, the debts are not consolidated into one payment. The consumer then runs the risk of being required to make separate payments on each good sold.

### C. Contract Limitations in Consumer Credit Transactions

The UCCC provides substantial protection to the consumer by curtailing some of the abuses resulting from sellers' use of contracts of adhesion. The UCCC limits or prohibits certain terms a seller may use in sale or loan agreements. It thus aims to restore the consumer's bargaining position and to reduce the ill effects of the hard bargain.<sup>147</sup> Balloon payments, multiple agreements, wage assignments, attorney's fees, and confessions of judgment are elements which the UCCC regulates.

#### 1. Balloon Payments

The UCCC restricts the use of balloon payments in sales or loan contracts.<sup>148</sup> It provides for the refinancing of the obligation if any "payment is more than twice as large as the average of earlier scheduled payments."<sup>149</sup> When refinanced, the amount of the new payments cannot be larger than twice the average of scheduled payments excluding the balloon payments.<sup>150</sup> The UCCC does not regulate balloon payments arising in a sale for an agricultural purpose, in revolving ac-

145. WYO. STAT. § 40-2-409(1) (Supp. 1971). First payments received are applied to the first debts incurred unless the sales are made on the same day. If the sales are made on the same day, then the smaller debt is the first to be repaid.

146. *Id.*

147. Bailey, *The Substantive Provisions of the Uniform Consumer Credit Code: 20th Century Consumer Protection in a Free Enterprise System*, 29 OHIO ST. L.J. 614 (1968).

148. WYO. STAT. §§ 40-2-405, -3-402 (Supp. 1971).

149. *Id.*

150. UCCC § 2.405, Comment.

counts, or when by agreement of the parties the payments are adjusted to the seasonal income of the purchaser. The lessor in a consumer lease is likewise restricted in the use of balloon payments.<sup>151</sup>

## 2. Multiple Agreements

Multiple agreements are regulated to prevent the seller from exploiting the credit service charges and avoiding the disclosure requirements. The UCCC prevents the seller from dividing a single sale into two or more sales if the effect would result in a higher yearly rate of interest than would be allowed in a single credit sale.<sup>152</sup> The UCCC treats any increase in the credit service charge stemming from the use of multiple agreements as an excess charge.<sup>153</sup> The annual percentage disclosure requirement can be avoided where the amount financed is low enough to fall within the minimum charge provision in section 40-2-306(k).<sup>154</sup>

## 3. Wage Assignment

The UCCC, as enacted in Wyoming, specifically allows a *revocable* wage assignment given by an employee to a creditor.<sup>155</sup> Any *irrevocable* assignment obtained by a creditor for payment or as security for payment is not enforceable.<sup>156</sup>

## 4. Attorney Fees

The Wyoming legislature rejected the alternatives offered in the UCCC regarding attorney fees and substituted its own provision.<sup>157</sup> It provides that after default on any loan,

151. WYO. STAT. § 40-2-406 (Supp. 1971).

152. WYO. STAT. § 40-2-402 (Supp. 1971).

153. *Id.* See also WYO. STAT. §§ 40-5-202, -6-113 (Supp. 1971).

154. WYO. STAT. § 40-2-306(k) (Supp. 1971). The use of multiple agreements in consumer loans is regulated only to the extent of requiring disclosure. The acquisition of a higher rate of interest through multiple agreements in a loan is not regulated.

155. WYO. STAT. § 40-2-410 (Supp. 1971).

156. *Id.* The Wyoming UCCC has an added provision allowing assignments of commissions or accounts receivable which are payable to the consumer. WYO. STAT. § 40-2-410(2) (Supp. 1971).

157. WYO. STAT. §§ 40-2-413, -3-404 (Supp. 1971). *But see* UCCC §§ 2.413, 3.404, Alternatives A and B. The Wyoming provision is alternative B without the percentage fee ceiling. Likewise UCCC § 3.404.

credit sale, or lease, the buyer can be liable for reasonable attorney fees if so stated in the agreement. "There is no requirement that the attorney must file suit against the buyer to earn the fee."<sup>158</sup> The drafters of the UCCC felt that the cost of legal services should be considered a part of the seller's or lender's cost of doing business and passed on their customers, but the legislators obviously felt that they should be paid by the individual defaulting consumer.<sup>159</sup>

### 5. Confession of Judgment

Wyoming was only one of a few states that previously allowed cognovit notes (judgment notes) in all transactions.<sup>160</sup> In adopting the UCCC in Wyoming, the legislature has rendered void any provision in any underlying consumer sales or loan agreement which would authorize confession of judgment by anyone other than the buyer.<sup>161</sup>

While the consumer in Wyoming is prohibited from authorizing another to confess judgment for him, the UCCC does not prohibit warrants of attorney used in *commercial agreements*.<sup>162</sup> However, even when used commercially the judgment confessed may be vacated upon a showing of meritorious defense by the purchaser.

### D. Home Solicitation Sales

The UCCC was promulgated to curtail specific evils occurring in consumer credit but not the sharp practices used by salesmen to procure a sale. Two exceptions to this orientation are in the regulation of home solicitation and referral sales. The problem generally involves a hesitant buyer who is coerced into the purchase of a product in his home by a high pressure salesman. The UCCC does not prevent such an occurrence but gives to consumers affirmative rights which can be exercised to restore equality in their respective bargaining positions.

---

158. UCCC § 2.413, Alternative B Comment.

159. *Id.*

160. WILLIER & HART, CONSUMER CREDIT HANDBOOK 61 (1969).

161. WYO. STAT. § 40-2-415 (Supp. 1971).

162. *Westring v. Cheyenne National Bank*, 393 P.2d 119 (Wyo. 1964).

To be defined a home solicitation sale, there must be a sale procured at the consumer's residence occasioned through a face-to-face confrontation.<sup>163</sup> The home solicitation sale does not include sales which are pursuant to a revolving charge account, which consist of farm equipment, or which result from prior negotiations elsewhere.<sup>164</sup> The UCCC grants the consumer the right to cancel a home solicitation sale.<sup>165</sup> The consumer is given until midnight of the third business day after the day of sale to give notice of cancellation to the seller. Any written notice given to the seller is sufficient.<sup>166</sup> If the mails are used, notice of cancellation occurs at the time of mailing.<sup>167</sup> The UCCC excludes goods and services sold in an emergency situation<sup>168</sup> since it might be difficult, for example, to find a plumber to fix a broken sewer line if the buyer had the right of cancellation.

The seller in a home solicitation sale must further comply with the provisions regarding the sales agreement. The contract must contain the date of purchase, the buyer's signature, and a statement of the buyer's rights.<sup>169</sup> After receiving notice of the buyer's cancellation, the seller has ten days to return any payments made by the buyer or any instrument of indebtedness.<sup>170</sup> The seller must also return within this time period all goods or the reasonable value thereof given by the buyer in consideration for the sale.<sup>171</sup> To insure their return or a recovery thereon, the UCCC provides that the buyer may retain possession and grants the buyer a lien on the goods sold.<sup>172</sup>

In the event of cancellation when the seller has not taken a down payment, he receives nothing from the buyer. If a down payment is taken, the seller is given the right to five per cent of the cash price or the down payment, whichever

---

163. WYO. STAT. § 40-2-501 (Supp. 1971).

164. *Id.*

165. WYO. STAT. § 40-2-502(1) (Supp. 1971).

166. WYO. STAT. §§ 40-2-502(2), -2-502(4) (Supp. 1971).

167. WYO. STAT. § 40-2-502(3) (Supp. 1971).

168. WYO. STAT. § 40-2-502(5) (Supp. 1971).

169. WYO. STAT. § 40-2-503(1) (Supp. 1971).

170. WYO. STAT. § 40-2-504(1) (Supp. 1971).

171. WYO. STAT. § 40-2-504(2) (Supp. 1971).

172. WYO. STAT. § 40-2-504(4) (Supp. 1971).

is larger.<sup>173</sup> Upon the seller's compliance after cancellation, the buyer is obligated to tender the goods back to the seller but only at his place of residence. If the seller fails to demand their return within forty days, the buyer has the right to keep them.<sup>174</sup>

One method used by sellers in the home solicitation sale to make a product more attractive has been to include a provision for referral sales in the contract.<sup>175</sup> The seller may offer to reduce the purchaser's cost if the purchaser provides him with the name of a person who subsequently purchases. The UCCC allows the seller to give a discount or payment to the buyer in return for names of prospective purchasers, but the benefit cannot be contingent upon that named person buying.<sup>176</sup>

The shortcoming of the UCCC's handling of the home solicitation sale is that the seller, rather than running the risk of cancellation, will delay the delivery of the goods for three days. The buyer then has little leverage to force the seller's compliance with the UCCC because he does not have possession of the goods from which his lien arises. However, as has been shown, the UCCC does provide the customer with some protection in an area previously devoid of such.

### E. Supervised Loans

The UCCC includes both regulated and supervised loans. The Wyoming UCCC only provides for supervised loans.<sup>177</sup> The distinction between a regulated loan and a supervised loan is found in the difference in maximum finance charges allowed for each. Under the UCCC, if the finance charge exceeds ten per cent, it is a regulated loan; if in excess of 18 per cent, it is a supervised loan.<sup>178</sup> The UCCC requires the lender to be licensed only if the loan is a supervised loan.<sup>179</sup>

173. WYO. STAT. § 40-2-504(3) (Supp. 1971).

174. WYO. STAT. § 40-2-505(1) (Supp. 1971).

175. WYO. STAT. § 40-2-411 (Supp. 1971). Referral sales are regulated in all consumer transactions, but they most frequently arise in the home solicitation sale.

176. *Id.*

177. WYO. STAT. § 40-3-501(1) (Supp. 1971).

178. UCCC §§ 3.501(1), .501(3).

179. UCCC § 3.502.

Rather than make this distinction, the Wyoming legislature provided that all loans in which the finance charge exceeds ten per cent shall be supervised loans.<sup>180</sup> No person or financial organization may make a supervised loan unless he is already regulated by a federal or state agency or is licensed to make loans under the provisions in the Wyoming UCCC.<sup>181</sup> Those organizations regulated by another governmental agency must still comply with the Wyoming UCCC. The State Examiner is designated as the Administrator and is empowered to issue licenses, revoke or suspend licenses, and make examinations and investigations of the records or businesses of all supervised lenders.<sup>182</sup> All actions taken by the Administrator are governed by the Wyoming Administrative Procedure Act.<sup>183</sup>

The use of multiple agreements in supervised loans is regulated in the same manner and to the same extent as a credit sale or a consumer loan, except that a husband and wife must be bound to only one loan agreement.<sup>184</sup> The reason for this explicit provision being omitted from the provisions in the contract limitations section is not known, but "it is inconceivable that a court would honor such a subterfuge in other transactions even though ostensibly the debtor as to each transaction is a different person."<sup>185</sup>

Payments made pursuant to a supervised loan must be substantially uniform in the amount and period of payment. Also, the loan term cannot exceed 37 months if the principal is over \$300 and 25 months if under \$300.<sup>186</sup> The Wyoming UCCC provides that a supervised loan agreement may not contain a provision for payment of attorney fees by the debtor unless the principal is over \$1,000.<sup>187</sup> Allowing for reasonable attorney fees in both consumer credit sales and loans but not in supervised loans under \$1,000 is logically inconsistent. The individual defaulting consumer pays the expense in the

180. WYO. STAT. § 40-3-501(1) (Supp. 1971).

181. WYO. STAT. § 40-3-502 (Supp. 1971).

182. WYO. STAT. §§ 40-6-103, -3-503, -3-504, -3-505, -3-506, (Supp. 1971).

183. WYO. STAT. § 40-3-507 (Supp. 1971).

184. WYO. STAT. § 40-3-509 (Supp. 1971).

185. WILLIER & HART, CONSUMER CREDIT HANDBOOK 58 (1969).

186. WYO. STAT. § 40-3-511 (Supp. 1971).

187. WYO. STAT. § 40-3-513 (Supp. 1971).

former but not in the latter. In the supervised loan less than \$1,000, the lender figures the legal expense into his overhead as a cost of doing business.

The Wyoming UCCC provides for more control over lenders who loan at lower rates of interest than the UCCC does. The degree to which this extended regulation of supervised lenders increases consumer protection is not known. Nevertheless, it seems to provide more protection to Wyoming consumers than the UCCC would.

## V. INSURANCE

Consumer credit insurance generally provides that the insurer will indemnify the creditor against default by the debtor due to death, accident or illness in the amount of the outstanding debt. Consumer credit insurance thus falls generally into two broad categories: life insurance and accident and health insurance. The UCCC also covers property insurance provided by the creditor if the amount of the transaction is over \$300.

Credit insurance is usually obtained by the debtor at the place where the credit transaction is consummated. It can only be used when extensions of credit are to be repayed in a specified period of time. All policies make the creditor the primary beneficiary on the policy. Article 4 of the Wyoming UCCC<sup>188</sup> brings more certainty to the area of the law dealing with consumer credit insurance. It places limitations and regulations on consumer credit insurance and defines exactly what is to be supplied and expected under the policy by both the creditor and debtor when the debtor is insured against death, accident, illness, or property damage or loss.

The Wyoming UCCC changed the existing law governing consumer credit insurance.<sup>189</sup> Prior to 1967, Wyoming was virtually without a law governing consumer credit insurance.

---

188. WYO. STAT. §§ 40-4-101 to -4-304 (Supp. 1971).

189. See generally Davis, Elter, Blythe & Freund, *The Regulation of Consumer Credit Insurance*, 33 LAW AND CONTEMP. PROB. 718 (1969); Comment, *Credit Insurance: Abuse and Reform*, 10 B.C. COMM. & IND. L. REV. 439 (1969).

At that time the Wyoming Legislature enacted<sup>190</sup> its own version of the Model Credit Insurance Act.<sup>191</sup> The Model Act was adopted in response to widespread claims of abuse.<sup>192</sup> By its express provisions the Wyoming UCCC supplements but does not repeal the earlier Wyoming legislation. The provisions of the UCCC concerning administrative controls, liabilities, and penalties do not apply to persons acting as insurers. The corresponding provisions of sections 26.1-440 through 26.1-453 of the Wyoming Statutes do not apply to creditors and debtors.

The UCCC disclosure provisions covering insurance are designed to enable the debtor to make more informed decisions concerning credit terms. Creditors are required by the UCCC to disclose the fact that insurance is being provided to the debtor.<sup>193</sup> The creditor must deliver to the debtor an individual policy or a certificate of insurance (if covered under a group policy) disclosing all the terms of the insurance within thirty days after extending credit.<sup>194</sup> Also, the UCCC eliminates the problem of insuring the debtor for amounts in excess of the indebtedness involved by providing that the coverage shall at no time exceed the actual or scheduled amount of the unpaid indebtedness.<sup>195</sup> The amount of insurance on each periodic payment is limited to the original indebtedness divided by the number of periodic installments.<sup>196</sup>

The UCCC stipulates that the debtor's insurance premiums may not exceed the premiums paid by the creditor to the insurer.<sup>197</sup> "Pyramiding"<sup>198</sup> is specifically prohibited

190. WYO. STAT. § 26-1-440 (Supp. 1957).

191. REPORT OF THE COMMITTEE ON INSURANCE COVERING ALL INSTALLMENT SALES AND LOANS, 1 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS 1958 PROCEEDINGS 104. The current version of the Model Bill, revised December 1960, appears in 1 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS 1961 PROCEEDINGS 300 [hereinafter cited as MODEL BILL].

192. Larson, *Problems of State Regulation*, 413 INS. L.J. 327 (1957).

193. WYO. STAT. § 40-4-202(2) (Supp. 1971).

194. WYO. STAT. § 40-4-105 (Supp. 1971).

195. WYO. STAT. § 40-4-202(1)(a) (Supp. 1971). An exception is made for revolving credit and revolving loan accounts. WYO. STAT. § 40-4-202(2) (Supp. 1971).

196. WYO. STAT. § 40-4-202(1)(b) (Supp. 1971).

197. WYO. STAT. § 40-4-107(1) (Supp. 1971). The section provides that this is computed at the time the charge to the debtor is determined and must conform to the rate filed with the Commissioner of Insurance.

198. Pyramiding is the making of a separate charge for new insurance in connection with a deferral, refinancing, or a consolidation.



unless certain conditions are met.<sup>199</sup> The creditor must make a full refund or give credit for any unearned premium to the debtor or his estate upon the prepayment in full of a consumer credit sale or consumer loan.<sup>200</sup>

The problem of unreasonable rate charges to the debtor for his insurance coverage is alleviated. The UCCC accomplishes this by providing as follows:

Within 30 days after the filing of any form or schedule he [the Commissioner of Insurance] shall disapprove it if the premium rates or charges are unreasonable in relation to the benefits provided under the form, or if the form contains provisions which are unjust, unfair, inequitable, or deceptive, or encourage misrepresentation of the coverage, or are contrary to any provision of the insurance code or of any rule or regulation promulgated thereunder.<sup>201</sup>

The terms of this section are quite broad and leave much to the discretion of the Commissioner. This section has been construed as giving the Commissioner ample power to regulate premium rates for credit life, accident, and health insurance.<sup>202</sup>

A creditor may not make a separate contract for or receive a separate charge for property insurance unless the following conditions are satisfied: the property is valued at more than \$300<sup>203</sup>; the insurance covers a substantial risk of loss or damage to the property involved<sup>204</sup>; the term of the insurance is related to the credit terms.<sup>205</sup> If insured property held by the debtor is damaged or destroyed and the loss is not willfully caused by the debtor, the debtor is only liable to the creditor to the extent that the insurance does not cover the creditor's interest in the property.<sup>206</sup> Only when a debtor

---

199. WYO. STAT. § 40-4-110 (Supp. 1971).

200. WYO. STAT. § 40-4-108 (Supp. 1971).

201. WYO. STAT. § 40-4-203(2) (Supp. 1971).

202. *Old Republic Life Insurance Co. v. Webber*, 9 N.Y.2d 524, 215 N.Y.S.2d 148, 175 N.E.2d 177 (1961). WYO. STAT. § 40-4-203(2) (Supp. 1971) follows the New York insurance law.

203. WYO. STAT. § 40-4-301(3) (Supp. 1971).

204. WYO. STAT. § 40-4-301(1) (a) (Supp. 1971).

205. WYO. STAT. § 40-4-301(1) (b) (Supp. 1971).

206. An example would be when property worth \$10,000 and insured for \$8,000 held by the debtor is accidentally destroyed, the debtor is only liable to the creditor for the \$2,000 difference.

has defaulted or given his written consent can a policy of property insurance be cancelled.<sup>207</sup> The cancellation is not effective until written notice of the cancellation is received by the debtor.<sup>208</sup>

The disclosure of terms and coverage limitations of insurance are more adequately dealt with in the Model Bill than in the UCCC. The Model Bill requires that the substance of the policy delivered to the debtor be set out in detail,<sup>209</sup> whereas the UCCC does not specify what is to be included in the policy.<sup>210</sup> In states where the Model Bill has been enacted, the courts will have no trouble determining whether the terms of the policy adequately meet the desired standards of disclosure.

The major abuse in the field of consumer credit insurance which the UCCC fails to meet is reverse competition. Reverse competition consists of the insurer compensating the creditor for marketing and handling consumer credit insurance. The compensation usually allows the creditor to retain a percentage of the premiums collected or a retrospective rate credit or dividend based on its own favorable mortality experience. The UCCC states that the creditor is not required to account to the debtor for any "gain or advantage not prohibited by law" which may be derived by the creditor from the sale of the insurance.<sup>211</sup>

The final vital shortcoming of the insurance section in the UCCC is that there are no guidelines by which the Commissioner of Insurance is to determine whether rates and

---

207. WYO. STAT. § 40-4-304 (Supp. 1971).

208. *Id.*

209. MODEL BILL § 6.

210. WYO. STAT. § 40-4-105 (Supp. 1971).

211. WYO. STAT. § 40-4-108(2)(c) (Supp. 1971). The official comment in the UCCC on this section justifies this position by stating:

Subsection (2)(c) permits a creditor to derive from consumer credit insurance gains and advantages such as dividends and refunds resulting from favorable mortality or morbidity experience with respect to insured debtors, and is predicated on the following conclusions: (1) although the gains and advantages may be large to the creditor, they are relatively insignificant to each insured debtor and the calculating, clerical, and mailing costs of returning them to the insured debtors would be unreasonably disproportionate to the amounts involved, and (2) the requirement of Article 4 that premiums for consumer credit insurance be reasonable in relation to benefits, if properly enforced by the State Insurance (Commissioner), will preclude the possibility of the use of consumer credit insurance as a device by creditors for concealing hidden charges from debtors.

charges are reasonable in relation to the benefits received. The UCCC would be much more effective if a specific standard or approach was given to determine what is a reasonable benefit-cost ratio.

Although there are obvious shortcomings in the UCCC, it accomplishes what no other piece of state legislation has done regarding consumer credit insurance. It provides for determining the amount that can be charged for consumer credit insurance and provides for regulation and penalties if the UCCC's provisions are violated. Most important, it sets out for the consumer definite safeguards and provisions so that he can determine the terms of his consumer credit insurance and the amount provided when he is unable to make payments due to illness, accident or death.

Even when the benefits to be derived from the insurance section are considered, it is obvious that this is a weak and poorly drafted section of the UCCC. When dealing with problems that arise in the field of consumer credit insurance, the lawyer will have to rely heavily on the Model Bill and administrative regulations.

## VI. REMEDIES AND LIMITATIONS ON CREDITORS' PROCESSES

The UCCC puts severe limits upon creditors' traditional remedies. Legislative efforts to protect the consumer prior to the UCCC emphasized protection at the time of entering the contract. They essentially ignored the default and collection stages of the consumer credit business. Whereas creditors' remedies have traditionally been quite extensive, consumers' remedies have often been vague and difficult to enforce. The UCCC tries to remove these inequities by providing civil and criminal penalties for violation of its provisions. The following are exemplary of the UCCC's limitations on creditors' processes. In a consumer credit sale involving an amount less than \$500 when the creditor has repossessed or accepted the collateral after the consumer's default, deficiency judgments are denied. The use of prejudgment wage garnishment is banned, garnishment after judgment is

limited, and discharge from employment is prohibited when such discharge is due to the institution of garnishment proceedings. Agreements obtained by threats of physical violence are rendered void. Finally, if a court should find any agreement or part thereof unconscionable, it is judicially unenforceable.

### A. Debtors' Remedies

The major premise upon which debtors' remedies are based is that most creditors are legitimate and extend credit within the law. Their violations of the law are usually unintentional mistakes. In a credit oriented society, these creditors provide invaluable services to both the consumer and the country as a whole. The UCCC provisions are not aimed at these creditors. Rather, it is those few fringe operators who are out to make as much money as possible from the unwary or needy consumer (either by using means in complete disregard of the law or behind a legal facade but in violation of the general objectives of the law) that the UCCC provisions are intended to bring to justice. The UCCC provides for lenient yet effective remedies for the common violation made by mistake and harsh penalties for the willful violation.

The UCCC provides certain civil remedies to the debtor for willful violations of its provision by the creditor.<sup>212</sup> The debtor may recover from the creditor twice the credit service or loan finance charge if the disclosure provisions of the UCCC are not met. A creditor's liability for a disclosure violation may not be less than \$100 or greater than \$1000.<sup>213</sup> Additionally, a successful debtor may recover a reasonable amount for attorney fees.<sup>214</sup> The creditor is excused from liability if he notifies the debtor of the violation and makes the necessary disclosures within fifteen days after discovering the violation and before an action is commenced.<sup>215</sup> The creditor may also be excused if he can prove that the violation was unintentional.<sup>216</sup>

212. WYO. STAT. §§ 40-5-202, -5-203 (Supp. 1971).

213. WYO. STAT. § 40-5-203(1)(a) (Supp. 1971).

214. WYO. STAT. § 40-5-203(1)(b) (Supp. 1971).

215. WYO. STAT. § 40-5-203(2) (Supp. 1971).

216. WYO. STAT. § 40-5-203(3) (Supp. 1971).

A debtor may bring an action against a transferee of the original creditor based upon a credit transaction involving a security interest in land. The action must have been one that could have been maintained against the original creditor and the transferee must have been in a continuing business relationship with the creditor at the time of the transaction.<sup>217</sup> A one year statute of limitations is imposed on any consumer claim involving disclosure provisions.<sup>218</sup> The statute of limitations does not apply when the claim is asserted either as a set-off or a defense in a suit by the creditor.<sup>219</sup>

Loans made with a loan finance charge exceeding ten per cent by a person not authorized to make supervised loans are void.<sup>220</sup> The debtor is not obligated to pay either the principal or the loan finance charge on a void loan. If the debtor has made the payment, he is given the right to recover the payment from the violator.<sup>221</sup>

Creditor violations of the UCCC provisions governing home solicitation sales pose special problems. The remedies available to the consumer for such a wrong are discussed elsewhere.<sup>222</sup>

A second general premise upon which debtors' remedies are based is that most consumers are not adequately versed on consumer credit law to realize when a creditor violates the law (by either an innocent mistake or an intentional violation). If the consumer is aware, the violations usually involve such a small sum of money that it is not worthwhile for the individual consumer to go to the expense of enforcing his claim. One of the major objectives of the UCCC is to provide a quick and easy procedure for consumers to remedy consumer credit violations.

The UCCC attempts to provide such a procedure by relieving the consumer of his obligation to pay a charge in excess of that allowed. If he has paid an excess, he is entitled

---

217. WYO. STAT. § 40-5-203(4) (Supp. 1971).

218. WYO. STAT. § 40-5-203(5) (Supp. 1971).

219. WYO. STAT. § 40-5-205 (Supp. 1971).

220. WYO. STAT. § 40-5-202(2) (Supp. 1971).

221. *Id.*

222. *See pp. 688-90 supra.*

to a refund.<sup>223</sup> If the creditor refuses to refund the excess charge within a reasonable time after demand by the debtor, then the debtor is entitled to recover a penalty to be determined by the court. The penalty will be the greater of the finance charge or ten times the amount of the excess charge.<sup>224</sup> This will be an inducement to the creditor to make a speedy and total refund of the excess charge.

Since the consumer must often rely on his own meager resources to initiate litigation against an adamant creditor, the effect of these civil remedies is diluted. The Administrator, however, is authorized to bring an action on behalf of a group of consumers when the violation concerns excess charges.<sup>225</sup> The UCCC contains no other class action provision. There is also no explicit provision which allows a group of consumers to move the Administrator to initiate proceedings for excess charges.

The UCCC provisions for debtors' remedies could be improved. The addition of specific provisions for the full recovery of attorney fees and court costs in all successful legal actions by debtors and the specific right to bring class actions against unlawful activities by creditors would provide needed encouragement for consumers to combat illegal credit practices.

## B. Criminal Sanctions

The UCCC provides certain criminal penalties for violations of its provisions.<sup>226</sup> A supervised lender who wilfully makes charges in excess of those permitted for supervised loans may be fined \$1000 or imprisoned for up to six months, or both.<sup>227</sup> If a nonlicensed person engages in making supervised loans in violation of the UCCC, he may be fined up to \$5000 or imprisoned up to one year, or both.<sup>228</sup> Any person who engages in making consumer credit sales, leases, or loans,

223. WYO. STAT. § 40-5-202 (Supp. 1971).

224. WYO. STAT. § 40-5-202(4) (Supp. 1971).

225. WYO. STAT. §§ 40-6-104, -6-108, -6-113 (Supp. 1971).

226. WYO. STAT. §§ 40-5-301, -5-302 (Supp. 1971).

227. WYO. STAT. § 40-5-301(1) (Supp. 1971).

228. WYO. STAT. § 40-5-301(2) (Supp. 1971).

or who takes assignments of rights against debtors and undertakes direct collection of payments or assertions of those rights in violation of the provisions governing such procedures<sup>229</sup> may be fined up to \$1000.<sup>230</sup> Any person who knowingly and willfully violates any of the UCCC provisions relating to disclosure or advertising may be fined up to \$5000 or sentenced up to one year in prison, or both.<sup>231</sup>

### C. Deficiency Judgments

“Perhaps the most significant protection for the debtor is the limitation on a sales creditor’s rights to obtain a deficiency judgment.”<sup>232</sup> This lingering liability for the price of goods sold after the creditor has repossessed them has been one of the major reasons for the garnishment of wages. A creditor is no longer able to obtain a deficiency judgment when the price is \$500 or less.<sup>233</sup> The seller is prohibited from circumventing this section by taking other goods as collateral.<sup>234</sup>

In a sale of goods for less than \$500, the debtor is freed from personal liability to the repossessing creditor for any unpaid balance of the debt.<sup>235</sup> Therefore, the debtor is not faced with having an outstanding judgment against him. The creditor is also prohibited from levying or repossessing property that is exempt from a deficiency judgment.<sup>236</sup> The section thus prevents the creditor from doing indirectly what he is prohibited from doing directly. This section is in direct conflict with the Uniform Commercial Code which states that a secured creditor is entitled to a deficiency judgment after any properly conducted realization sale.<sup>237</sup> The UCCC’s provision will control as being the last statement of legislative intent, insofar as the transaction concerned comes within the ambit of the UCCC.

---

229. WYO. STAT. §§ 40-6-202, -6-203 (Supp. 1971).

230. WYO. STAT. § 40-5-301(3) (Supp. 1971).

231. WYO. STAT. § 40-5-302 (Supp. 1971).

232. Hogan, *The Uniform Consumer Credit Code*, 25 BUS. LAW. 159, 162 (Special Issue, 1969).

233. WYO. STAT. § 40-5-103 (Supp. 1971). The UCCC sets the value at \$1000.

234. WYO. STAT. § 40-5-103(6) (Supp. 1971).

235. WYO. STAT. § 40-5-103(2) (Supp. 1971).

236. WYO. STAT. § 40-5-103(6) (Supp. 1971).

237. UCC §§ 9-503, -504(2).

One of the major faults of Section 5.103<sup>238</sup> is that it covers only consumer credit sales of goods and services, mentioning nothing about consumer credit loans. It is not uncommon for a consumer to borrow in order to purchase goods whose value is less than \$500. These borrowers should be afforded the same right to be free from deficiency judgments when their goods are repossessed as those consumers involved in a consumer credit sale.

Nevertheless, the limitations on deficiency judgments should make the seller provide a more realistic relationship between the rate of depreciation of the goods and the schedule of payments. He will thus assure himself that he will be able to recapture the balance owed from the goods themselves.

#### D. Garnishment

The UCCC places restrictions on the garnishment of debtors' wages.<sup>239</sup> Wage garnishment is the process by which a creditor obtains a judicial writ ordering a debtor's employer to withhold payment of the debtor's wages.<sup>240</sup> Garnishment has been identified as a principal cause of the huge number of consumer bankruptcies in recent years.<sup>241</sup> The drafting of laws controlling garnishment must fulfill a dual obligation. They must provide a means whereby a creditor may collect his legal debts and also protect a debtor from any unnecessary hardship by allowing him to retain sufficient assets to sustain a basic standard of living.<sup>242</sup>

The allowance of prejudgment garnishment was one of the major inequities previously found in consumer credit law.<sup>243</sup> A creditor was able to obtain a writ of garnishment against the debtor before the claim was adjudicated in a court of law. The amount of the claim was withdrawn from

238. WYO. STAT. § 40-5-103 (Supp. 1971).

239. See Comment, *Garnishment Under the Consumer Credit Protection Act and the Uniform Consumer Credit Code*, 38 U. CIN. L. REV. 338 (1969).

240. See *Wilder v. Inter-Island Steam Nav. Co.*, 211 U.S. 239 (1908).

241. H.R. REP. NO. 1040, 90th Cong., 1st Sess. 20 (1967).

242. Comment, *supra* note 238, at 338.

243. See Hely, *Prejudgment Wage Garnishment: Notice and Hearing Requirements under Sniadich v. Family Finance Corp.*, 11 B.C. IND. & COM. L. REV. 462 (1970).



the debtor's paycheck and held until the claim was settled.<sup>244</sup> Prior to the enactment of the UCCC, Wyoming provided that the garnishment process could begin at the time the complaint for the suit on the debt was issued.<sup>245</sup> Because of the typical debtor's poor financial position, the overall effect of pre-judgment garnishment was to coerce the debtor into a settlement.<sup>246</sup> The United States Supreme Court ruled in *Sniadach v. Family Finance Corp.*<sup>247</sup> that this process was unconstitutional when the debtor was not given an immediate opportunity to challenge the garnishment proceeding. The Court stated:

[W]here the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and prior hearing . . . this prejudgment procedure violates the fundamental principles of due process.<sup>248</sup>

The UCCC completely eliminates the problems of prejudgment garnishment by prohibiting it completely.<sup>249</sup>

The UCCC brings certainty to the area of law dealing with postjudgment garnishment. It begins by defining disposable earnings as "that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld."<sup>250</sup> The term "individual" as used in the UCCC is broad enough to include anyone who receives earnings from any source. The UCCC further stipulates that only a certain amount of an individual's disposable earnings are subject to garnishment.<sup>251</sup>

A percentage method coupled with a minimum limitation is used to determine the dollar amount subject to garnishment. The UCCC provides that the maximum amount of the disposable earnings that may be garnished for any work week may

244. See *Frank F. Fasi Supply Co. v. Wigwam Invest. Co.*, 308 F.Supp. 59 (D.C. Hawaii, 1969); *Union Bank & Trust Co. v. Edwards*, 281 Ky. 693, 137 S.W.2d 344 (1940).

245. WYO. STAT. §§ 1-226, -235 (1957).

246. *Patterson, Wage Garnishment—An Extraordinary Remedy Run Amuck*, 45 WASH. L. REV. 735, 737 (1968).

247. 395 U.S. 337 (1969).

248. *Id.* at 342.

249. WYO. STAT. § 40-5-104 (Supp. 1971).

250. WYO. STAT. § 40-5-105(1)(a) (Supp. 1971).

251. WYO. STAT. § 40-5-105(2) (Supp. 1971).

not exceed the lesser of 25 per cent of the disposable earnings for that week<sup>252</sup> or the amount by which a debtor's earnings for that week exceed thirty times<sup>253</sup> the federal hourly minimum wage.<sup>254</sup> This method is a plan designed to keep pace with changing economic conditions. Any straight percentage computation would be undesirable because no matter how meager a consumer's wages, a portion of those wages would continue to be subject to garnishment.<sup>255</sup> The UCCC attempts to remedy this problem by prohibiting garnishment below a certain dollar value.<sup>256</sup> The UCCC, however, will need periodic legislative revision if this minimum exemption is to serve its purpose adequately.<sup>257</sup> It has been suggested that a better method of preventing rigidity would be to gear the minimum exemption to the regularly published cost of living index.<sup>258</sup> A second defect is that a high wage earner might have too much of his wages exempt, *i.e.*, more than he needs to sustain a decent standard of living. This problem could be remedied by providing a maximum exemption based on either of the methods discussed above.<sup>259</sup>

Besides personal harassment by creditors, the debtor has often faced discharge by his employer when his wages have been garnished.<sup>260</sup> The UCCC meets this problem by providing that no employer shall discharge an employee because his wages are being garnished for payment of a judgment arising from a consumer credit sale, consumer lease or loan.<sup>261</sup> This approach, while protecting the employee, completely ignores the employer.<sup>262</sup> In a garnishment proceeding, the employer

252. WYO. STAT. § 40-5-105(2) (a) (Supp. 1971).

253. The UCCC sets the limit at 40 times the federal hourly minimum wage. UCCC 5-104(2) (b).

254. WYO. STAT. § 40-5-105(2) (b) (Supp. 1971).

255. See Note, *State Wage Exemption Laws and the New Iowa Statute, A Comparative Analysis*, 43 IOWA L. REV. 555, 557-58 (1958).

256. The debtor is assured of having at least \$48 of earnings a week exempt from garnishment.

257. Comment, *supra* note 239, at 345.

258. See Joslin, *Debtor's Exemption Laws: Time for a Modernization*, 34 IND. L.J. 355, 362 (1959).

259. Comment, *supra* note 239, at 345.

260. See *Wage Garnishment in Washington—An Empirical Study*, 43 WASH. L. REV. 743 (1968).

261. WYO. STAT. § 40-5-106 (Supp. 1971).

262. The Pennsylvania State Legislature abolished wage garnishment in 1845. The Pennsylvania Supreme Court stated the reasons as follows:

[I]nconvenience . . . of manufacturers and other large employers being harassed with attachment executions . . . complicating accounts, accumulating costs, and depriving them of labourers on

is subjected to numerous notices and the necessity of filing written returns, retaining counsel, making court appearances, adjusting payroll accounting, and sometimes liability for failure to withhold the proper percentage of the debtor's wages.<sup>263</sup> In addition to the foregoing problems that the employer must face in a garnishment proceeding, the UCCC subjects him to civil action for the recovery of wages resulting from an employees discharge due to garnishment and for an order requiring the employee's reinstatement.<sup>264</sup> The employer also must ascertain the source of indebtedness from which the garnishment arises. These provisions will undoubtedly be hard to enforce because the employer might circumvent the restrictions by discharging the employee for other stated reasons. In that case, the employee may have to resort to his union for relief. The logical result of these provisions is that they will cause the employer to retain the employee, allow garnishment, and pass the extra costs on to the public.

#### E. Unconscionability

The UCCC uses the concept of unconscionability to combat unfair practices not specifically dealt with in its provisions. The UCCC does not define "unconscionable," but it may be stated to be that which goes beyond the bounds of reasonable behavior and would subject debtors to coercion or practices that would "shock the conscience" of a court of equity.<sup>265</sup> The UCCC provides that if, as a matter of law, the court

finds the agreement or any clause of the agreement to have been *unconscionable* at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.<sup>266</sup>

---

whom they depended, by diverting wages from the current support of the labourer's family to the paying of former debts. *Firmstone v. Mack*, 49 Pa. 387, 392-93 (1865). See Comment, *Garnishment of Wages in Pennsylvania: Its History and Rationale*, 70 DICK. L. REV. 199 (1966).

263. See Brunn, *Wage Garnishment in California: A Study and Recommendations*, 53 CALIF. L. REV. 1214, 1229 (1965).

264. WYO. STAT. § 40-5-202(6) (Supp. 1971).

265. 1 CORBIN, CONTRACTS § 128 (1963).

266. WYO. STAT. § 40-5-108(1) (Supp. 1971) (emphasis added).

It is clear that in most cases "debtors cannot determine that conduct of a creditor is unconscionable; the Administrator cannot make such a determination; only courts may make this determination and in courts, only the judge but not a jury."<sup>267</sup> The determination of whether certain activity or a particular contract is unconscionable or not is therefore a question of law and not of fact.<sup>268</sup>

The UCCC sets forth a list of general abuses that are common in the consumer credit field. It states that such abuses may be considered in determining whether certain conduct is unconscionable or not.<sup>269</sup> The more notable criteria that the UCCC suggests should be considered when determining unconscionability are as follows: the goods must have a comprehensible value to the debtor;<sup>270</sup> the creditor did not knowingly take advantage of the debtor by reason of the debtor's physical or mental disability, illiteracy, or inability to understand the language of the contract;<sup>271</sup> or an extortionately high price was charged for the goods in relation to what they could be purchased for elsewhere.<sup>272</sup>

Section 6.111<sup>273</sup> provides that the Administrator may bring a civil action to restrain a creditor from engaging in a course of conduct that the Administrator considers unconscionable either in effecting a consumer credit transaction or in the collection of debts arising from such a transaction. An administrative restraining order is available for unconscionable solicitation and collection practices. The consumer is only given a remedy after a creditor has taken advantage of him.<sup>274</sup> The remedy is apparently not available to a consumer

267. Malcolm, *The Uniform Consumer Credit Code*, 25 BUS. LAW. 937, 984 (1970).

268. For recent cases applying the doctrine of unconscionability see *Williams v. Walker-Thomas Furn. Co.*, 350 F.2d 445 (1965); *American Home Improvement, Inc. v. MacIver*, 105 N.H. 435, 201 A.2d 886 (1964); *Ellsworth Dobbs, Inc. v. Johnson*, 50 N.J. 528, 236 A.2d 843 (1967); *Unico v. Owen*, 50 N.J. 101, 232 A.2d 405 (1967); *Henningsen v. Bloomsfield Motors, Inc.*, 32 N.J. 358, 161 A.2d 69 (1960); *Frostifresh Corp. v. Reynoso*, 54 Misc.2d 119, 281 N.Y.S.2d 964 (Sup. Ct. 1967).

269. WYO. STAT. § 40-6-111(3) (Supp. 1971).

270. WYO. STAT. § 40-6-111(3)(b) (Supp. 1971).

271. WYO. STAT. § 40-6-111(3)(e) (Supp. 1971).

272. WYO. STAT. § 40-6-111(3)(c) (Supp. 1971); see *Jones v. Star Credit Corp.*, 37 U.S.L.W. 2549 (Nassau County Sup. Ct., N.Y., March 21, 1969).

273. WYO. STAT. § 40-6-111(1) (Supp. 1971).

274. WYO. STAT. § 40-5-108 (Supp. 1971).

induced by unconscionable conduct to enter into an agreement as long as the terms of the agreement are not themselves unconscionable. The result may be explained on the basis that the UCCC's main objective is to regulate the terms of the contract. The consumer is given other civil remedies as protection from unconscionable conduct, *i.e.*, duress, fraud, and undue influence, if the terms of the agreement itself are not unconscionable.

Any credit arrangements are judicially unenforceable if it is shown that they were made with the threat of force or infliction of harm.<sup>275</sup> The Administrator has the power to obtain a restraining order to prohibit extortionate collection practices.<sup>276</sup> The UCCC limitations should prevent creditors from harassing debtors and using what are generally known as extortionate collection practices.

#### F. Conclusion

The limitations placed on the traditional creditor remedies and processes and the new rights given the consumer will bring an equality to an area of the law that was previously lacking such. The UCCC has given the consumer effective remedies to combat abuses in the consumer credit business. Although the state is given weapons to fight violations of the UCCC by use of criminal penalties and administrative action, the enforcement of the provisions is borne mainly by the consumer. The effectiveness of the remedies provided by the UCCC, therefore, depends on consumer education and awareness of the law governing the consumer credit transaction.

GARY J. FISHER

DOUGLAS G. MADISON

MICHEAL E. WARREN

---

275. WYO. STAT. § 40-5-107 (Supp. 1971).

276. WYO. STAT. § 40-6-111(1) (Supp. 1971).