Volume 28 | Issue 2 Article 7

Fall 9-1-1971

Regulation Of Revolving Credit Service Charges

It will of course remain to be seen whether these agreements, both in terms of price-fixing and tie-ins, will be held to be violative of the antitrust laws. However, in consideration of the foregoing examination of the relevant antitrust law precedent, credit card issuers would be well advised to examine their particular situations with a view toward prospective adverse litigation either by individuals or by the federal government.

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REGULATION OF REVOLVING CREDIT SERVICE CHARGES

No aspect of American retailing is more familiar today than the sale of goods on revolving credit terms.[1] It has been estimated that in 1970, revolving credit accounted for 30% of all retail sales, exclusive of automobiles, groceries and liquor; in terms of dollar volume, approximately $59 billion worth of business was done under this type of plan.[2]

These figures, striking in themselves, are more remarkable in view of the fact that revolving credit is only about twenty-five years old, although its historical antecedents go back much further. The sale of goods on open credit has been traced back to Colonial times.[3] Nor is the use of the credit card, or its ancestor the credit coin,[4] a new development. Such devices have been used to identify the customer who is authorized to purchase on credit since before 1920.[5] Prior to World War II, however, credit sales were usually made on a thirty-day credit basis, with the customer expected

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[1]Under a revolving credit plan, the customer is extended an open line of credit up to a maximum dollar limit. He may make purchases on this line of credit at any time, generally identifying himself by means of a credit card. Upon receiving a bill at the close of each billing period, usually a month, for purchases made during that period, he has the option of paying the account in full or of making a partial payment equal to or greater than a set minimum percentage or dollar amount (typically 10 per cent or $10, whichever is greater). If he elects to defer payment of part of the account, he will be assessed a service charge, most often 1 ½% of the unpaid monthly balance. *See* Note, *Regulation of Consumer Credit—The Credit Card and the State Legislature*, 73 YALE L. J. 886, 887-88 (1964).

[2]The Wall Street Journal, Mar. 4, 1971, at 1, col. 6.

[3]NATIONAL RETAIL MERCHANTS ASSOCIATION, ECONOMIC CHARACTERISTICS OF DEPARTMENT STORE CREDIT 5 (1969) (hereinafter cited as NRMA STUDY).

[4]The credit coin was a small metal disc bearing the merchant's name and the customer's account number. Davenport, *Bank Credit Cards and the Uniform Commercial Code*, 1 VALPARAISO U. L. REV. 218 n.1 (1967).

[5]Comment, *The Tripartite Credit Card Transaction: A Legal Infant*, 48 CALIF. L. REV. 459, 460 (1960).

to pay his account in full on the receipt of each monthly statement.[6] The "revolving" feature, which allows the purchaser to make his payments in installments, was introduced by Wanamaker's of Philadelphia in 1938, although under this plan the credit privilege was still extended free of charge. The development of today's revolving credit system was completed in the years after the Second World War when retailers began to impose a service charge on the unpaid balance of the account.[7]

It is the imposition of this charge which has brought the revolving credit plan under heavy attack in the courts for the first time in its quarter-century of existence. The Supreme Court of Wisconsin, in October of 1970, held that that state's general usury statute[8] forbids revolving creditors to assess a service charge of more than 12% a year or 1% a month on the unpaid monthly balance.[9] Since this decision, trial courts in Connecticut,[10] Minnesota,[11] and South Dakota[12] have followed the Wisconsin court in holding that retailers could not impose charges in excess of the maximum rates set by their respective usury statutes,[13] and the Maine Bank Commissioner has issued a ruling to the same effect.[14] Similar challenges are reported to be pending in at least six other states.[15]

TYPES OF REVOLVING CREDIT PLANS

Revolving credit plans fall into two distinct legal categories; the differences between them, while not significant from the point of view of

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[6]NRMA STUDY at 7. According to data compiled by the Federal Reserve system, such 30-day charge accounts still constitute the largest single segment of open-end consumer credit, although their importance relative to bank and department store credit cards has declined. *Hearings on H.R. 66 Before a Subcomm. of the House Select Comm. on Small Business*, 91st Cong., 2d Sess. 156 (1970) (hereinafter cited as *House Hearings*).

[7]NRMA STUDY at 7.

[8]WIS. STAT. ANN. § 138.05(1) (Supp. 1970).

[9]State v. J.C. Penney Co., 48 Wis. 2d 125, 179 N.W.2d 641 (1970).

[10]Donnelly v. Sears, Roebuck & Co., 3 CCH CONSUMER CREDIT GUIDE ¶ 99,570 (Conn. Ct. C.P., Hartford County, Dec. 2, 1970).

[11]Montgomery Ward & Co. v. O'Neil, 3 CCH CONSUMER CREDIT GUIDE ¶ 99,535 (Minn. Dist. Ct., Ramsey County, Apr. 1, 1970).

[12]Rollinger v. J. C. Penney Co., 3 CCH CONSUMER CREDIT GUIDE ¶ 99,609 (Cir. Ct. S.D. Dec. 9, 1970).

[13]The maximum rate is 12 per cent in Connecticut, CONN. GEN. STAT. ANN. § 37-4 (1958), 8 per cent in Minnesota, MINN. STAT. ANN. § 334.01 (1956), and 10 per cent in South Dakota, S.D. CODE § 54-3-7 (Supp. 1970).

[14]*Maine Bank Comm'rs Ruling* No. 1971-1, 3 CCH CONSUMER CREDIT GUIDE ¶ 99,546 (Mar. 30, 1971). The Maine interest limit is 12 per cent, ME. REV. STAT. ANN. tit. 9, § 3086 (1964).

[15]Colorado, Indiana, Iowa, Louisiana, Montana and New Jersey. Webster, *Bank Charge Cards—Recent Developments in Regulation and Operation*, 26 BUS. LAW. 43 (1970); *Wisconsin Supreme Court Service Charge Decision Against J.C. Penney Starts Chain Reaction*, 25 PERS. FIN. L.Q. REP. 26 (1970).

the customer, may be of considerable importance in determining the applicability of various forms of regulation.[16] The older and simpler of the two, the bipartite or "seller" revolving charge account, is created by a single agreement between a retailer and his customer which establishes the terms on which the customer may make purchases. This type of credit generally involves the use of a credit card which is issued by the retailer and will be honored by him.[17] The leading creditors under this type of account are the large department store chains;[18] $4.2 billion was outstanding in department store revolving credit at the end of 1969.[19]

The second, more recent,[20] and more complex type of revolving charge account is the tripartite or "lender" credit plan, of which BankAmericard and Master Charge are the most widely-known examples. The lender charge account involves three agreements among three parties: the retailer, the customer, and the financial institution which initiates and administers the plan. The latter issues the customer a credit card which the retailer agrees to honor by selling its holder goods on credit, generally at his regular cash price. In making a purchase with this card, the customer signs a sales slip which evidences his debt. The issuer buys these obligations from the retailer at a prearranged discount of from one to five percent,[21] and bills the customer monthly. The customer, pursuant to his agreement with the issuer, then has the option of paying in full or of spreading his payments over several months and incurring a service charge, just as he has under a seller revolving credit agreement.[22]

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[16]*See* note 98 *infra.*

[17]*Dennis v. Sears, Roebuck & Co.,* ___ Tenn. ___, 446 S.W.2d 260 (1969) sets out a typical seller-customer charge agreement. *Id.* at 262-63.

[18]The familiar gasoline company credit cards have not during most of their history been revolving credit cards in the true sense, in that payment has been due on receipt of the monthly statement. During the past few years, however, some of the major companies have converted their charge accounts to the revolving credit system. *House Hearings* at 238-46, 267.

[19]*Id.* at 156.

[20]While bank credit card plans have been in existence since 1951, they were local and generally unprofitable until the middle 1960's. *Id.* at 258-59. The "travel and entertainment" credit cards, of which Diners Club is the oldest and best known, have been operating since 1949. Like the traditional gasoline company credit card, however, these are not revolving credit cards. The cardholder pays a flat yearly service fee rather than a charge computed on his unpaid monthly balance, and is expected to pay his account in full each month. *Id.* at 194-215.

[21]The bank credit card issuer thus has two distinct sources of income: the service charge assessed on the customer who extends payment, and the discount charged the retailer.

[22]*See* note 1 *supra.* For a more detailed description of the mechanics of the lender revolving credit plan, see Davenport, *Bank Credit Cards and the Uniform Commercial Code,* 1 VALPARAISO U.L. REV. 218, 224-32 (1967); Robinson, *New Developments in Retail Financing,* 8 KAN. L. REV. 554, 567-74 (1960); Comment, *The Tripartite Credit Card Transaction: A Legal Infant,* 48 CALIF. L. REV. 459, 463-65 (1960).

USURY AND THE TIME PRICE DOCTRINE

The history of governmental efforts to forbid the loan of money at an interest rate in excess of an imposed maximum can be traced back for thousands of years.[23] Despite general agreement by modern commentators that such laws are ineffective and undesirable,[24] efforts in this country to repeal them have met with almost total failure.[25] Every state but one has some form of usury statute today.[26] The maximum rate set by the great majority of these laws is 12% per year or less.[27]

The potential impact of these statutes on an economy in which $120 billion in consumer credit is outstanding[28] is enormous. The great bulk of credit transactions, however, have been brought within a series of exceptions, both judicially and legislatively created, to the usury laws.[29] In the case of retail credit sales, the seller has generally been permitted to impose a finance charge in excess of the statutory ceiling through the operation of the time price doctrine.

This doctrine was first enunciated in the 1827 English case of *Beete v. Bidgood*,[30] and adopted in 1861 by the United States Supreme Court in *Hogg v. Ruffner*.[31] In the latter case the court stated the doctrine as follows:

> [I]t is manifest that if A propose to sell to B a tract of land for $10,000 in cash, or for $20,000 payable in ten annual installments, and if B prefers to pay the larger sum to gain time, the contract cannot be called usurious. A vendor may prefer $100 in hand to double the sum in expectancy, and a purchaser may prefer the greater price with the longer credit . . . . Such a contract has none

[23]*See, e.g.*, Benfield, *Money, Mortgages, and Migraine—The Usury Headache*, 19 CASE W. RES. L. REV. 819, 822-26 (1968); Bernstein, *Background of a Gray Area in Law: The Checkered Career of Usury*, 51 A.B.A.J. 846 (1965).

[24]*E.g.*, Benfield, *supra* note 21; Shanks, *Practical Problems in the Application of Archaic Usury Statutes*, 53 VA. L. REV. 327 (1967); Shay, *The Uniform Consumer Credit Code: An Economist's View*, 54 CORNELL L. REV. 491 (1969).

[25]Benfield, *supra* note 21, at 826.

[26]The lone exception is New Hampshire. For a survey of state usury statutes, see B. CURRAN, TRENDS IN CONSUMER CREDIT LEGISLATION 140-43 (1965). Since this survey was published, Massachusetts, which did not then have usury statutes, has passed such legislation. *See* note 27 *infra*.

[27]Two states set maximum rates which do not restrict most transactions. MASS. ANN. LAWS ch. 27, § 49 (Supp. 1970) (20 per cent); R.I. GEN. LAWS ANN. § 6-26-2 (1956) (21 per cent).

[28]Address by Basil J. Mezines, Executive Director, Federal Trade Commission, before the Practising Law Institute, New York City, Oct. 23, 1970. A copy of this address is on file in the Washington and Lee Law School Library.

[29]Shanks, *supra* note 22, at 331-34.

[30]108 Eng. Rep. 792 (K.B. 1827).

[31]66 U.S. (1 Black) 115 (1861).

of the characteristics of usury; it is not for the loan of money, or forbearance of a debt.[32]

The distinction drawn in these cases between the sale of goods on credit and the making of a loan to the buyer in order to enable him to make the purchase is recognized today as unfounded in economic reality.[33] The holding in *Hogg v. Ruffner* has been explained on the ground that installment financing was a novelty at the time the case was decided, and its implications were not then apparent.[34] Nevertheless, the doctrine continued to be applied after modern patterns of consumer credit financing had emerged. A leading case is *General Motors Acceptance Corp. v. Weinrich,*[35] decided in 1924. Weinrich bought a used automobile, trading in his old car and giving the dealer a promissory note for the balance of the "time price," which was $51 greater than the cash price. The dealer shortly thereafter sold the note to GMAC. Despite the readily apparent nature of this now-familiar transaction, the court held that Weinrich was "a purchaser, and not a borrower, and consequently . . . not within the intendment and protection of the usury laws."[36]

Despite its abandonment in a few states,[37] the time price doctrine remains very much alive today,[38] quite possibly due in part to a feeling by the courts that adherence to it, even in defiance of economic realities, is preferable to the extension of the general usury statutes.[39] That the courts are prepared to look to the substance of the transaction where the question of usury is not involved is illustrated by the recent Virginia case of *General Electric Credit Corp. v. Lunsford,*[40] in which the maker of an installment note secured by a deed of trust, which had been given for the purchase of a shell house, sought to anticipate payment as permitted by a clause in the deed. Construction of the clause was governed by a statute which provided that the debtor could anticipate payment "by the payment of principal and interest to the date of such anticipated payment only."[41] The holder of

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[32]*Id.* at 118-19.

[33]*E.g.,* Benfield, *supra* note 21, at 845-46; Shay, *supra* note 22, at 508-11.

[34]Warren, *Regulation of Finance Charges in Retail Instalment Sales,* 68 YALE L. J. 839, 842-43 (1959).

[35]218 Mo. App. 68, 262 S.W. 425 (1924).

[36]262 S.W. at 430.

[37]Notes 41-44 and accompanying text *infra.*

[38]For examples of recent decisions reaffirming the doctrine, *see* United Acceptance Corp. v. Joiner, 280 Ala. 605, 196 So. 2d 720 (1967); Petersen v. Philco Finance Corp., 91 Idaho 644, 428 P.2d 961 (1967); Schauman v. Solmica Midwest, Inc., 283 Minn. 437, 168 N.W.2d 667 (1969); Steffenauer v. Mytelka & Rose, Inc., 87 N.J. Super. 506, 210 A.2d 88 (Super. Ct. 1965), *aff'd,* 46 N.J. 299, 216 A.2d 585 (1966).

[39]Benfield, *supra* note 21, at 846.

[40]209 Va. 743, 167 S.E.2d 414 (1969).

[41]VA. CODE ANN. § 55-60(6) (Repl. Vol. 1969).

the note contended that the difference between the cash price of the house and the amount of the note was not interest but a time price differential. Conceding that the time price doctrine was recognized in Virginia, the court nevertheless held that the term "interest" should be construed more broadly for the purposes of the statute in question than for the purposes of the usury law, and sustained the debtor's right of anticipation.[42]

The first break in the previously universal acceptance of the time price doctrine came in 1952, when the Arkansas Supreme Court declined to hold usurious an installment sales contract which had been entered into in reliance on prior decisions upholding the doctrine, but warned that it would scrutinize future transactions for their economic substance.[43] This warning was realized in the 1957 case of *Sloan v. Sears, Roebuck & Co.*,[44] which effectively abolished the time price doctrine in Arkansas and subjected all credit transactions in that state to its constitutional interest ceiling of 10%.[45] Within a few years thereafter a series of Nebraska cases, culminating in *Lloyd v. Gutgsell*,[46] developed the rule that any transaction where a time price was calculated by applying a set of rates or tables to the cash price would be considered a loan or forbearance within the purview of the usury statute. The Nebraska legislature, however, responded promptly to these decisions by enacting a series of statutes specifically authorizing the imposition of higher finance charges on various types of retail credit sales.[47]

In passing this legislation Nebraska joined the great majority of states which have so-called retail installment sales acts, which govern the finance charges which may be assessed by a retail seller on a conventional installment sale.[48] These statutes generally contain disclosure requirements and allow minimum charges which evidently render them inappropriate with respect to a revolving credit transaction.[49] Writing in 1964, a student commentator pointed out that the prevalence of these acts had apparently curtailed the spread of the decisions challenging the time price doctrine, but predicted that the revolving charge account, a credit sales device not within the scope of the acts, might impel courts to revive the trend.[50] In view of its several substantial differences from the

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[42]209 Va. at 748, 167 S.E.2d at 418-19 (1969).

[43]Hare v. General Contract Purchase Corp., 220 Ark. 601, 249 S.W.2d 973 (1952).

[44]228 Ark. 464, 308 S.W.2d 802 (1957).

[45]ARK. CONST. art. 19, § 13.

[46]175 Neb. 775, 124 N.W.2d 198 (1963).

[47]Included was a statute validating seller revolving credit service charges. NEB. REV. STAT. § 45-207 (1968); *see* Appendix A.

[48]For an exhaustive summary and analysis of these statutes, see B. CURRAN, TRENDS IN CONSUMER CREDIT LEGISLATION 91-123 (1965).

[49]*See* Note, *Revolving Credit*, 55 NW. U.L. REV. 330, 343-44 (1960).

[50]Note, *Regulation of Revolving Credit—The Credit Card and the State Legislature*, 73 YALE L.J. 886, 898 (1964).

prototypical time price sale,[51] the term "uncertain," recently used to describe the status of the revolving credit transaction under the time price doctrine, seems entirely appropriate.[52]

Nevertheless, the revolving credit system survived its first two challenges in the courts. In *Uni-Serv Corp. v. Commissioner of Banks*,[53] the Supreme Judicial Court of Massachusetts held that the operator of a lender revolving credit plan was not within the scope of that state's Small Loan Act because the plan came under the time price doctrine. And in *Dennis v. Sears, Roebuck & Co.*,[54] the Tennessee court rejected the argument that a statute authorizing revolving creditors to impose a 1 ½ per cent monthly service charge[55] was invalid as violative of a provision of the Tennessee constitution forbidding the legislature to permit interest rates in excess of 10 per cent.[56] The court pointed to the nearly unanimous acceptance of the time price doctrine in holding that the service charge was not interest;[57] the conceptual difficulties raised by the peculiar nature of the revolving credit sale were not discussed.

In *State v. J.C. Penney Co.*,[58] the Wisconsin court emphasized these difficulties in declining to exempt revolving credit sales from the operation of the usury laws. The most obvious problem is the absurdity of saying that a revolving credit transaction is a sale at a "time price" which cannot be established when the sale is made.[59] This would in itself seem sufficient basis for the decision. The court went further, however, citing ten other differences between the revolving credit sale and the traditional time price transaction described in *Hogg v. Ruffner*.[60] Among these was the fact that the service charge is the product of the application of a fixed percentage to the balance of the account,[61] a statement which is true of virtually every type of modern credit sale. It would thus appear that the Wisconsin court may follow the Arkansas and Nebraska decisions in virtually abolishing the time price doctrine.[62]

It is hard to deny that the approach taken in this decision, and the result reached, are logically sound; yet it may be questioned whether the opinion

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[51]*See* note 59 and accompanying text *infra*.

[52]*Symposium—The Uniform Consumer Credit Code and Its Effects on Minnesota Laws*, 55 MINN. L. REV. 523, 543 (1971).

[53]349 Mass. 283, 207 N.E.2d 906 (1965).

[54]___ Tenn. ___, 446 S.W.2d 260 (1969).

[55]TENN. CODE ANN. § 47-11-104 (Repl. Vol. 1964).

[56]TENN. CONST. art. XI, § 7.

[57]446 S.W.2d at 263-65.

[58]48 Wis. 2d 125, 179 N.W.2d 641 (1970).

[59]179 N.W.2d at 653.

[60]66 U.S. (1 Black) 115 (1861); text accompanying note 29 *supra*.

[61]179 N.W.2d at 652-53.

[62]Notes 41-44 and accompanying text *supra*.

reaches the real underlying issue in the case. In the words of Professor Homer Kripke:

> Far too much paper has been wasted arguing the merits of this doctrine as a legal matter, for the question is inherently not susceptible of a rational answer. A legal concept like interest or usury is not a natural phenomenon the contours of which can be measured with a calipers, but a human construction as broad or as narrow as man says it is. If man says that the concept of usury includes time price differentials, then it does. If man says the contrary, then it does not. So much for the law.[63]

The legal questions involved in the decision whether to apply the usury laws to revolving charge accounts are neither of great difficulty nor of great significance. What would appear to be of more importance are the practical complexities of this area of consumer credit and the economic implications of its regulation.

CALCULATION OF THE SERVICE CHARGE

The most basic objection to the use of the general usury statute to regulate revolving credit service charges is that the stated rate of charge is a nominal rate only, which will seldom if ever describe the actual cost to the customer of the credit privilege.[64] The primary reason for this discrepancy is that under the methods of computation most generally in use,[65] the service charge is computed on the basis of the unpaid balance of the account on a fixed day of the billing cycle, regardless of the date on which purchases and payments are made. This results in a wide variation from cycle to cycle and from customer to customer in the actual rate paid. To take an oversimplified example for purposes of illustration, assume that one customer makes a $100 purchase thirty days before the close of the billing cycle and another makes the same purchase on the day before the cycle ends, and that each is assessed a 1 ½ per cent service charge. If each pays his bill on the following day, the second customer will have paid $1.50 for the use of $100 for two days, or an effective annual rate of approximately 270 per cent, while the actual rate charged the first customer will approach the nominal 18 per cent.[66] Thus, the actual cost of credit to the customer can only be computed individually and after the fact.[67]

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[63]Kripke, *Consumer Credit Regulation: A Creditor-Oriented Viewpoint*, 68 COLUM. L. REV. 445, 452 (1968); *see* Shanks, *supra* note 22, at 343-44.

[64]NRMA STUDY at 24.

[65]*See* notes 69-74 and accompanying text *infra*.

[66]Note, *Revolving Credit*, 55 NW. U.L. REV. 330, 333 (1960).

[67]*Hearings on S.5 Before the Subcomm. on Financial Institutions of the Senate Comm. on Banking and Currency*, 90th Cong., 1st Sess. 201 (1967) (hereinafter cited as

The example given would seem to indicate that the revolving credit system is heavily loaded in favor of the creditor. On the average, however, the bias is downward from the nominal rate because of the universal practice of not assessing a service charge until the second billing date following each purchase, thus allowing the consumer to avoid any service charge by paying for each purchase within twenty-five days after being billed.[68] A considerable number of customers do make a habit of paying in full each month, thus treating the revolving account as a conventional thirty-day charge account and enjoying interest-free credit.[69] Even when only the accounts which do incur service charges are considered, the net effect of this "free period" is to drive the average annual rate below the nominal rate.[70]

The general usury laws also fail to address themselves to the crucial matter of the method used by the creditor to compute the balance on which the service charge is due. There are three of these in general use, of which the most common,[71] and the least favorable to the customer, is the so-called previous balance method.[72] Under this method of computation, if there is any balance remaining unpaid in an account at the close of a billing cycle the service charge is assessed on the balance outstanding at the *beginning* of the cycle, regardless of any payments or credits to the account during the period. The disadvantages of this method from the consumer's point of view are apparent; where it is used, it is entirely possible for a customer to pay a greater annual rate than the nominal 18 per cent.[73]

Senate Hearings). A sample of 40 active accounts prepared by J. C. Penney Co. for these hearings showed that the actual rates paid for the use of credit over a year's time ranged from a high of 17.10 per cent to a low of .83 per cent. *Id.* at 217.

[68]NRMA STUDY at 24. This practice is a result of the origin of the revolving charge account in the traditional 30-day open account, upon which no service charge was imposed. When some retailers attempted to assess a charge on their revolving accounts from the date of purchase, they aroused resistance on the part of customers who were accustomed to paying for their purchases at the end of each month without being charged for the privilege. *Id.* at 24-25.

[69]Thirteen of the forty active accounts in the sample cited in note 65 *supra* had incurred no service charge in the course of a year. *Senate Hearings* at 217. Bank of America officials have estimated that 40 per cent of BankAmericard holders do not extend their balances. *House Hearings* at 111.

[70]Fifteen stores surveyed by the NRMA showed an actual return of 14.41 per cent on their investment in accounts that did incur service charges. NRMA STUDY at 24. BankAmericard's average yield is "somewhat less than 14 per cent." *House Hearings* at 112.

[71]Of the nation's five leading retailers, three use this method of computation. The Wall Street Journal, Mar. 4, 1971, at 1, col. 6.

[72]The descriptions of these methods, and the nomenclature applied to them, are derived from Federal Trade Commission, Consumer Credit Policy Statement No. 4, May 7, 1970.

[73]For an illustration see *Senate Hearings* at 202.

The second method of computation involves the use of the average daily balance, which is computed by dividing the sum of the balances outstanding on each day of the billing cycle by the number of days in the cycle. This average daily balance method thus gives credit for payments according to the dates on which they were made. For example, if $50 were paid on the sixteenth day of a 30-day cycle on an opening balance of $100, the service charge would be assessed on the average daily balance of $75, while the same payment made on the twenty-first day would result in an average daily balance of $83.33. This method comes closer than any other to eliminating the inequalities in the rates charged different customers. If the free payment period were eliminated, as one commentator has urged,[74] each customer would be charged at virtually the nominal rate.

The final method of computation is the adjusted balance method, under which the customer receives credit for all payments and returns during the month before the service charge is computed. Of the three methods, this is obviously the most favorable to the consumer. If a payment of $50 is made halfway through the billing period on a $100 opening balance, the service charge assessed under the adjusted balance method will be half that paid under the previous balance method. As the hypothetical payment becomes larger, the difference in result becomes even more striking.[75] As applied to the sample account in Appendix B over a three-month period, the previous balance method produced a service charge of $1.47, an annual rate of 15.7 per cent, while the yield under the adjusted balance method was $.88 or 9.5 per cent.[76]

The implications of the foregoing considerations from the point of view of the creditor who has been brought under the general usury statutes and seeks to minimize his losses of revenue are manifold. If he has been using the adjusted balance method, he can simply change over to the previous balance method and probably suffer little or no loss. A monthly rate of 1 per cent, applied by means of the previous balance method to the sample account,[77] produces a *greater* return than the 1 ½ per cent rate computed on the adjusted balance.[78]

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[74]Ziegel, *Consumer Credit Regulation: A Canadian Consumer-Oriented Viewpoint*, 68 COLUM. L. REV. 488, 510 (1968).

[75]Monthly disclosure to the consumer of the method used in computing service charges, as required by the Federal Truth in Lending Act, 15 U.S.C. § 1637(a)(2) (Supp. V 1965-69), had led to a heavy volume of complaint to the Federal Trade Commission concerning the use of the previous balance method. Address by Basil J. Mezines, note 26 *supra*. Senator Proxmire of Wisconsin has introduced legislation in the Senate which would require creditors to use the adjusted balance method. S. 652, 92d Cong., 1st Sess. (1971).

[76]Senate Hearings at 202. It should be noted that the sample was prepared by J.C. Penney, which uses the adjusted balance method. Penney's terms the previous balance method the "beginning balance method."

[77]*See* note 74 *supra*.

[78]The net service charge over the three months would be $.97, compared with $.88 produced by the adjusted balance method and the higher rate.

Nor is the creditor who is already using the previous balance method necessarily foreclosed by the usury statutes from attempting to maintain his service charge revenue at or near its former level. The abolition of the free payment privilege and the imposition of a service charge from the date of purchase would presumably increase his rate of return enormously.[79] As a practical matter, this is unlikely because of the resistance it would almost certainly arouse in his customers,[80] but if the usury laws are taken to speak only to the nominal rate it would be entirely permissible. On the other hand, if what is proscribed is the imposition of an effective rate in excess of the statutory ceiling, it should be possible to continue to calculate service charges on the basis of the 1 ½ per cent monthly rate if a ceiling could be imposed to prevent the charge of any single account from exceeding the statutory maximum. Another possibility, which would minimize the impact of the usury statute even more, would be to abandon the nominal rate entirely and calculate the service charge on an individual monthly basis in order to yield the maximum permitted annual rate.

Whether or not creditors do in fact attempt to make use of these or similar devices to minimize the effect of lowered rate ceilings, the fact that they are apparently available is significant in itself. It suggests that the *J. C. Penney* decision and its progeny do not represent a very desirable approach to the regulation of revolving credit service charges, since the usury statutes on which they rest do not speak to the complexities of revolving credit.

THE COST OF CREDIT

Apparently underlying the decisions which have held the 18 per cent annual rate usurious is the assumption that this rate in fact yields an unreasonable profit to the retailer or the bank which imposes it. Only the Connecticut court, however, has articulated this premise:

> The consumer is a sitting duck for the powerful guns of corporate business and financial interests . . .
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> The use of the credit card has opened a new field for financing with the cost burden borne by the consumer. The sale has become secondary to the financing thereof, so that the merchandisers make more money charging interest on the account than is made in the sale of their wares. In spawning the open and unlimited credit system, we have given birth to a whole new class of "usurers" who have openly flaunted [*sic*] the statutory interest limit . . . .[81]

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[79]*See* note 64 and accompanying text *supra.*

[80]*See* note 66 *supra.*

[81]Donnelly v. Sears, Roebuck & Co., 3 CCH CONSUMER CREDIT GUIDE ¶ 99,570 (Conn. Ct. C.P., Hartford County, Dec. 2, 1970).

As might be expected, this contention is vigorously disputed by retailers, who contend that revolving credit service charges do not pay for the cost of administering the accounts. The major document supporting this contention is a study undertaken in 1968 by the accounting firm of Touche, Ross, Bailey & Smart on behalf of the National Retail Merchants Association.[82] Of fifteen stores surveyed, ten large (over $10 million annual gross sales) and five small (under $5 million), only four showed a profit on their revolving credit operations.[83] The large stores fared better than the smaller outlets, losing less than 2 per cent on the average compared with more than 3 per cent for the latter; overall, the fifteen stores in the sample lost an average of 2.31 per cent.[84]

Figures released by individual retailers tell a similar story. J. C. Penney Co. contends that it lost $23 million on its overall credit operations in 1969.[85] Montgomery Ward, which, unlike J.C. Penney, uses the previous balance method, reports that its credit plans "vary from a modest profit to a modest loss . . . ."[86]

It is not contended, of course, that retailers will therefore abandon the practice of extending credit, which presumably pays for itself amply by increasing gross sales.[87] Assuming, however, that the industry figures are approximately correct and that the prevailing service charge of 1 ½ per cent monthly at best does little more than pay for the costs of revolving credit, it is readily apparent that a reduction in the permissible rates, if it cannot be neutralized by any of the methods outlined above,[88] will create a sizeable deficiency in revenue which retailers will attempt to recoup.[89] The simplest and most effective means of doing so will be to raise the cash price of their merchandise.[90]

There is considerable empirical evidence that this is indeed what has taken place where monthly rates substantially below 1 ½ per cent are in effect. A field study of retail appliance prices in Arkansas, where a constitutional maximum annual rate of 10 per cent has been applied to time sales since 1957,[91] showed that prices in Arkansas were consistently higher than those charged for comparable merchandise in neighboring

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[82]NRMA STUDY.

[83]*Id.* at 35, 63.

[84]*Id.* at 63.

[85]The Wall Street Journal, Mar. 4, 1971, at 1, col. 6.

[86]*Id.*

[87]The president of Montgomery Ward has estimated that sales of certain items would drop 35 to 50 per cent if credit were discontinued. *Id.* at 13, col. 1.

[88]Notes 75-78 and accompanying text *supra.*

[89]NRMA STUDY at 15.

[90]*Id.*

[91]Notes 41-43 and accompanying text *supra.*

states.[92] A recent survey of merchants in Washington, where a 12 per cent maximum went into effect in January of 1969,[93] showed that 56 per cent had raised prices an average of 5 per cent specifically to counteract the loss of service charge revenue.[94]

As a result the cash customer helps to pay for the service afforded the credit customer.[95] There is no automatic presumption that this is an undesirable result;[96] it could well be argued that it serves a redistributive function. It would appear, however, that these considerations should be taken into account in determining the level at which maximum rates should be set. It is further submitted that legislatures are better suited than courts for the determination of public policy in this area.

EXISTING AND PROPOSED LEGISLATION

State legislatures have in fact spoken to the problem of revolving charge account service charges with increasing frequency in recent years. A survey in 1965 showed thirteen states with some kind of legislation specifically addressed to revolving credit.[97] As of this writing, the number has increased to well over thirty.[98]

Only about half these states, however, regulate both seller and lender charge accounts. Many of the statutes passed prior to the mid-1960s, when the bank charge card came to prominence,[99] contain terms like that of the Delaware act, which defines "retail installment account" as

> an account established by an agreement entered into in this State, pursuant to which the buyer promises to pay, in installments, *to a retail seller,* his outstanding balance incurred in retail installment sales . . . .[100]

By its terms this provision would not appear to apply to a lender charge account, in which the promise to pay is made to the financing institution

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[92]Lynch, *Consumer Credit at Ten Per Cent Simple: The Arkansas Case,* 1968 U. ILL. L. FORUM 592, 599-605.

[93]WASH. REV. CODE § 63.14.130 (Supp. 1970).

[94]The Wall Street Journal, Mar. 4, 1971, at 13, col. 1. A further possible result of lowered maximum rates, reported by The Wall Street Journal to be taking place at one Wisconsin store since the *J.C. Penney* decision, is the denial of credit cards to some applicants who would formerly have received them. *Id.* at 13, col. 2.

[95]*See* Lynch, *supra* note 90, at 606.

[96]*See* NRMA STUDY at 16.

[97]B. CURRAN, TRENDS IN CONSUMER CREDIT LEGISLATION 102 n.151 (1965).

[98]For a survey of these statutes and the maximum rates they permit, see Appendix A *infra.*

[99]Note 18 *supra.*

[100]DEL. CODE ANN. tit. 6, § 4301 (Supp. 1968) (emphasis added). This statute was passed in 1960.

rather than to the seller.[101] A few states, on the other hand, have statutes which apply only to lender credit plans.[102]

Every statute except that of Kentucky[103] sets a basic maximum rate for service charges, most often 1 ½ per cent. Higher rates, up to 2 per cent, are authorized in several states,[104] while six set lower ceilings.[105] Almost half provide for a sliding scale, under which the basic rate is charged up to a fixed dollar amount and a lower rate applies to the excess. This sliding scale presumably causes the service charge to reflect more accurately the actual costs of handling the account, many of which are fixed and do not increase with the size of the balance.

A second method of distributing these fixed costs more accurately is authorized by several states, which permit a revolving creditor to impose a minimum service charge on all accounts on which the charge as computed is less than the minimum amount.[107] This charge, where authorized, ranges from 25¢ to $1.[108] Even where higher charges are permitted, however, the Federal Truth in Lending Act[109] provides a strong incentive for creditors not to assess a charge in excess of 50¢. Under this law, if a minimum charge of 50¢ or less is imposed, that month's statement may disclose the nominal rather than the effective rate of the charge,[110] while if the minimum charge is more than 50¢ the effective rate must be computed and disclosed.[111]

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[101] *See* Comment, *The Tripartite Credit Card Transaction: A Legal Infant,* 48 CALIF. L. REV. 459, 497-98 (1960); Note, *Regulation of Installment Credit Cards,* 35 U. CIN. L. REV. 424, 442-45 (1966). More recent statutes generally avoid this difficulty. For example, the Virginia statute speaks of "[a]ny seller or lender engaged in the extension of consumer credit under an open-end credit or similar plan . . ." VA. CODE ANN. § 6.1-362 (Supp. 1970).

[102] These states are Arizona, South Carolina and South Dakota. See Appendix A.

[103] Kentucky authorizes the assessment of a service charge in excess of the usury ceiling, but imposes no maximum rate. KY. REV. STAT. ANN. § 371.300(3) (1969).

[104] Illinois (seller only), Kansas, Michigan, Nevada, Ohio, South Dakota, Utah (seller only) and Wyoming (seller only). See Appendix A. There is some evidence that market forces tend to keep rates down to the prevailing 1 ½ per cent even where higher rates are permitted: two Ohio banks, responding to a Congressional inquiry in early 1970, reported charging 1 ½ per cent despite that state's authorization of a rate of 2 per cent on the first $200. *House Hearings* at 229, 237.

[105] Arizona, Idaho (lender only), Oklahoma (lender only), Pennsylvania, Washington and Wyoming (lender only). See Appendix A.

[106] NRMA STUDY at 26; *cf.* State v. J. C. Penney Co., 48 Wis. 2d 125, 179 N.W.2d 641, 653 (1970).

[107] Under legislation currently pending in the U.S. Senate this practice would be made illegal. S. 652, 92d Cong., 1st Sess.

[108] See Appendix A. Where the minimum charge is $1, assuming a rate of 1 ½ per cent, any customer with an outstanding balance of less than $66.66 will pay that amount; where it is 25¢, 25¢ will be charged on all balances under $16.66.

[109] 15 U.S.C. §§ 1601-77 (Supp. V 1965-69).

[110] 15 U.S.C. § 1638(5) (Supp. V 1965-69).

[111] 15 U.S.C. §§ 1606(a)(2), 1637(c) (Supp. V 1965-69). *See* Brandel, *Open End Credit Disclosure,* 26 BUS. LAW. 815, 820 (1971).

With regard to the method of billing, most of the statutes apparently permit, either tacitly[112] or explicitly,[113] the use of any of the three principal systems. Massachusetts in 1970 amended its statute to require the use of either the average daily balance method or the adjusted balance method,[114] and the Arizona statute can be interpreted as imposing a similar requirement.[115] New Mexico, perhaps through careless draftsmanship, appears to require the use of the previous balance method.[116]

THE UNIFORM CONSUMER CREDIT CODE

The National Conference of Commissioners on Uniform State Laws in 1968 approved the Uniform Consumer Credit Code,[117] which has since been adopted in Idaho, Indiana, Oklahoma, Utah and Wyoming. The UCCC treats seller and lender revolving credit plans separately and sets different maximum rates for each. The creditor under a seller account is permitted to charge 2 per cent on the first $500[118] and 1 ½ per cent on the excess.[119] Under a lender revolving credit plan, however, the permitted charge is a flat 1 ½ per cent.[120] A 50¢ minimum charge is permitted on both types of account.[121] Any of the three methods of computation is permitted,[122] but the creditor must disclose to the debtor the method used.[123]

Despite its name, the UCCC has failed to produce uniformity in service charges in the states which have adopted it. Only Utah did not alter the rates as they were drafted.[124] In Indiana, the maximum rate enacted for

[112]*E.g.*, PA. STAT. tit. 69, §§ 1901, 1904 (Supp. 1970); TENN. CODE ANN. § 47-11-104 (Repl. Vol. 1964).

[113]OHIO REV. CODE ANN. § 1107.27 (Baldwin Supp. 1969).

[114]MASS. ANN. LAWS ch. 255D, § 27(c)(3) (Supp. 1970).

[115]The statute requires the charge to be calculated "as of the regular monthly billing date or on the actual daily balances outstanding." ARIZ. REV. STAT. ANN. § 6-254(a)(3) (Supp. 1970).

[116]N.M. STAT. ANN. § 50-16-3(c) (Supp. 1969).

[117]Hereinafter cited as UCCC.

[118]UCCC § 1.106 provides that certain dollar amounts, of which this is one, shall change from time to time with the U.S. Department of Labor's Consumer Price Index. In accordance with this provision, Utah has raised this amount to $550. 1 CCH CONSUMER CREDIT GUIDE 5640 (1971).

[119]UCCC § 2.207(3).

[120]UCCC § 3.201(4)(a). The reason for the difference in rates is presumably that the lenders have a second source of revenue in the discount charged merchants on the purchase of customers' obligations. Note 20 *supra; see* Shay, *The Uniform Consumer Credit Code: An Economist's View*, 54 CORNELL L. REV. 491, 506-07 (1969).

[121]UCCC §§ 2.207(4), 3.201(4)(c).

[122]UCCC §§ 2.207(2), 3.201(4)(a).

[123]UCCC §§ 2.310(1)(b), (2)(f), 3.309(1)(b), (2)(f).

[124]UTAH CODE ANN. §§ 70B-2-207, 70B-3-201 (Supp. 1969); *see* note 116 *supra*.

seller revolving credit plans is 1 ½ per cent per month.[125] Oklahoma and Wyoming lowered the maximum rates to 1 ½ per cent on seller accounts[126] and 5/6 per cent on lender accounts.[127] And in Idaho, the maximum is 1 ½ per cent on seller accounts [128] and 1 ¼ per cent on lender accounts.[129]

CONCLUSION

Together with the growth of revolving credit has come a strong trend toward regulation of the service charges on revolving charge accounts. There seems little room for doubt that this trend will continue; the question at which this note has been directed is the possible form which this regulation will take. It is submitted that insufficiency of the general usury statutes to deal with the complex problems presented by the revolving charge account should limit the spread of the approach taken by the Wisconsin Supreme Court in the *J.C. Penney* case. The proper arena for the resolution of the competing interests involved would appear to be the legislature.

HARVEY L. HANDLEY III

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[125]Ind. Laws 1971, S.B. 5, § 2.207 (1 CCH CONSUMER CREDIT GUIDE 5331 (Mar. 30, 1971).

[126]OKLA. STAT. ANN. tit. 14A, § 2-207 (Supp. 1969); Wyo. Laws 1971, ch. 191, § 2.207 (1 CCH CONSUMER CREDIT GUIDE 5341 (Mar. 30, 1971)).

[127]OKLA. STAT. ANN. tit. 14A, § 3-201(4) (Supp. 1969); Wyo. Laws 1971, ch. 191, § 3.201(4) (1 CCH CONSUMER CREDIT GUIDE 5341 (Mar. 30, 1971)).

[128]Idaho Laws 1971, ch. 299, § 2.207 (1 CCH CONSUMER CREDIT GUIDE 5336 (Apr. 13, 1971)).

[129]Idaho Laws 1971, ch. 299, § 3.201(4) (1 CCH CONSUMER CREDIT GUIDE 5336 (Apr. 13, 1971)).

STATE	STATUTE	TYPE	MAXIMUM RATE	MINIMUM
ALABAMA	—	—	—	—
ALASKA	ALASKA STAT. § 06.05.208 (Supp. 1970)	Lender	1 ½% on the first $1000; 1% on the excess	$1
	ALASKA STAT. § 45.10.120(c) (Supp. 1970)	Seller	SAME	SAME
ARIZONA	ARIZ. REV. STAT. ANN. § 6-254(A)(3) (Supp. 1970)	Lender	1-1/3%	—
ARKANSAS	ARK. CONST. art. 19, § 13	Both	5/6%	—
CALIFORNIA	CAL. CIV. CODE § 1810.2 (West Supp. 1971)	Seller	1 ½% on the first $1000; 1% on the excess	$1
COLORADO	—	—	—	—
CONNECTICUT	—	—	—	—
DELAWARE	DEL. CODE ANN. tit. 6, § 4337 (Supp. 1968)	Seller	1 ½% on the first $1000; 1% on the excess	$1
DISTRICT OF COLUMBIA	—	—	—	—
FLORIDA	FLA. STAT. ANN. § 659.181 (Supp. 1971)	Lender	1 ½%	—
	FLA. STAT. ANN. § 520.35(3) (Supp. 1971)	Seller	1 ½%	$1
GEORGIA	GA. CODE ANN. § 28-504 (1969)	Lender	1 ½%	—
	GA. CODE ANN. § 96-904(b) (Supp. 1970)	Seller	1 ½%	$1
HAWAII	—	—	—	—

STATE	STATUTE	TYPE	MAXIMUM RATE	MINIMUM
IDAHO	Idaho Laws 1971, S.B. 5, § 3.301(4) (1 CCH CONSUMER CREDIT GUIDE 5331 (Mar. 30, 1971))	Lender	1 ¼%	50¢
	Idaho Laws 1971, S.B. 5, § 2-207 (1 CCH CONSUMER CREDIT GUIDE 5331 (Mar. 30, 1971))	Seller	1 ½%	50¢
ILLINOIS	ILL. ANN. STAT. ch. 74, § 4.2 (Smith-Hurd Supp. 1971)	Lender	1 ½%, plus 25¢ per transaction or $20 per year	—
	ILL. ANN. STAT. ch. 121 ½, § 528 (Smith-Hurd Supp. 1971)	Seller	1.8%	70¢
INDIANA	Ind. Laws 1971, S.B. 5, §§ 2-207, 3-201(4) (1 CCH CONSUMER CREDIT GUIDE 5331 (Mar. 30, 1971)	Both	1 ½%	50¢
IOWA	—	—		
KANSAS	KAN. STAT. ANN. §§ 16-508(A) (II), -903, -909 (Supp. 1970)	Both	1.78% on first $300; 1.35% between $300 and $1000; 1.20% on excess	50¢
KENTUCKY	KY. REV. STAT. ANN. § 371.300(3) (1969)	Seller	Service charge permitted, no maximum set	—
LOUISIANA	La. Acts 1970 No. 313 (Jul. 9, 1970)	Both	1 ½%	25¢
MAINE	—	—	—	—
MARYLAND	MD. ANN. CODE art. 83, § 153D(c) (1969 Repl. Vol.)	Seller	1 ½% on first $500; 1% on excess	—

STATE	STATUTE	TYPE	MAXIMUM RATE	MINIMUM
MASSACHUSETTS	MASS. ANN. LAWS ch. 255D § 27(c) (1969)	Seller	1 ½% on first $500, 1% on excess	50¢
MICHIGAN	MICH. STAT. ANN. § 19.416 (112)(c) (Supp. 1970)	Seller	1.7%	70¢
MINNESOTA	—	—	— —	
MISSISSIPPI	—	—		
MISSOURI	MO. ANN. STAT. § 408.300.2 (Supp. 1970)	Seller	1 ½% on the first $500; ¾% on the excess	70¢
MONTANA	—	—	—	—
NEBRASKA	NEB. REV. STAT. § 45-207 (1968)	Seller	1 ½% on the first $500; 1% on the excess	—
NEVADA	NEV. REV. STAT. §§ 97.095, -.245(3) (1967)	Both	1.8%	—
NEW HAMPSHIRE	—	—	—	—
NEW JERSEY	—	—	—	—
NEW MEXICO	N.M. STAT. ANN. § 50-16-3 (c) (Supp. 1969)	Seller	1 ½% on the first $500; 1% on the excess	70¢
NEW YORK	N.Y. PERS. PROP. LAW § 413 (McKinney Supp. 1970)	Both	1 ½% on the first $500; 1% on the excess	70¢
NORTH CAROLINA	N.C. GEN. STAT. § 24-11 (Supp. 1969)	Both	1 ½%	—
NORTH DAKOTA	N.D. CENT. CODE § 51-14-03 (1960)	Seller	1 ½%	—
OHIO	OHIO REV. CODE ANN. § 1107.27 (Baldwin Supp. 1969)	Lender	2% on the first $200; 1 ½% between $200 and $400; 1% on the excess	$1
	OHIO REV. CODE ANN. § 1317.11 (Baldwin 1964)	Seller	SAME	$1

STATE	STATUTE	TYPE	MAXIMUM RATE	MINIMUM
OKLAHOMA	OKLA. STAT. ANN. tit. 14A, § 3-201(4) (Supp. 1969)	Lender	5/6%	50¢
	OKLA. STAT. ANN. tit. 14A, § 2-207 (Supp. 1969)	Seller		50¢
OREGON	—	—	—	—
PENNSYLVANIA	PA. STAT. tit. 69, §§ 1901, 1904 (Supp. 1970)	Both	1 ¼%	70¢
RHODE ISLAND	R.I. GEN. LAWS ANN. § 6-27-4(b) (Supp. 1970)	Both	1 ½%	50¢
SOUTH CAROLINA	S.C. CODE ANN. § 8-233 (Supp. 1970)	Lender	1 ½%	—
SOUTH DAKOTA	S.D. CODE § 51-24-13 (Supp. 1970)	Lender	2% on the first $500; 1 ½% on the excess	$1
TENNESSEE	TENN. CODE ANN § 47-11-104 (1964 Repl. Vol.)	Seller	1 ½%	70¢
TEXAS	TEX. REV. CIV. STAT. ANN. art. 5069-6.03 (1971)	Seller	1 ½% on the first $500; 1% on the excess	75¢
UTAH	UTAH CODE ANN. § 70B-3-201 (Supp. 1969)	Lender	1 ½%	50¢
	UTAH CODE ANN. § 70B-2-207 (Supp. 1969)	Seller	2% on the first $550; 1 ½% on the excess	50¢
VERMONT	VT. STAT. ANN. tit. 8, § 1304 (1970)	Lender	1 ½% on the first $500; 1% on the excess	—
	VT. STAT. ANN. tit. 9, § 2406 (1970)	Seller	SAME	25¢
VIRGINIA	VA. CODE ANN. § 6.1-362 (Supp. 1970)	Both	1 ½%	—

STATE	STATUTE	TYPE	MAXIMUM RATE	MINIMUM
WASHINGTON	Wash. Rev. Code § 63.14.130 (Supp. 1970)	Seller	1%	$1
WEST VIRGINIA	—	—	—	—
WISCONSIN	—	—	—	—
WYOMING	Wyo. Laws 1971, ch. 191, § 3.201 (1 CCH Consumer Credit Guide 5341 (Mar. 30, 1971)	Lender	5/6%	50¢
	Wyo. Laws 1971, ch. 191, § 3.201 (1 CCH Consumer Credit Guide 5341 (Mar. 30, 1971)	Seller	1½%	50¢

A representative Penney charge account showing a comparison of service charges computed by the adjusted balance and beginning balance methods

Date	Purchases	Payments	Adjusted balance method			Beginning balance method	
			Beginning balance	Adjusted balance	Service charge[1]	Beginning balance	Service charge[1]
	(A)	(B)	(C)	(D)	(E)	(F)	(G)
Nov. 2	.....	.....	$28.91	......	......	$28.91	......
Nov. 9	.....	$10.00	......	......	......	......	......
Nov. 29	$5.46	...	......	$18.91	$0.28	......	$0.43
Dec. 2	......	.....	24.65	......	......	24.80	......
Dec 4	17.45	..	......	......	......	......	......
Dec. 11	......	10.00	......	......	......	......	......
Dec. 22	4.00	....	......	......	......	......	......
Dec. 28	2.98	....	......	......	......	......	......
Dec. 30	13 90	[2]8.98	.....	5.67	.09	......	.37
Jan 2	......	......	44.09	......	......	44.52	......
Jan. 12	15.53	.....	.....	.....	.....	......	.....
Jan 26	.	10.00	....	34.09	.51	......	.67
Total service charges	....	....	.....	.....	.88	......	1.47
Effective annual percentage rate:							
November	...	..	...	.....	15.6	.....	24.0
December	...	....	....	....	2 9	......	12.0
January	..	..	.....	.....	11.5	......	15.0
For the 3-month period	...	..	.	....	9.5	.....	15.7

[1] Service charge computed at a monthly rate of 1 ½ percent.
[2] Credit for returned merchandise.

Source: Penney Account No. 010-002-541-02, November 1965-January 1966.