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UNIFORM CONSUMER CREDIT CODE—
A PROSPECT FOR CONSUMER CREDIT REFORM IN VIRGINIA

DAVID F. PETERS*

The Uniform Consumer Credit Code1 [hereinafter referred to as the UCCC] is currently being considered by legislative study committees2 and various interested groups for possible submission to the 1972 Session of the Virginia General Assembly. Virginia’s interest in the UCCC joins that of at least twenty-one other states3 that have studied the Code in the last two years. So far, only Oklahoma4 and Utah5 have enacted the UCCC into law, but the gradual success of the Uniform Commercial Code6 serves as a reminder not to dismiss the UCCC summarily because of its slow beginnings.

The UCCC was prepared by the National Conference of Commissioners on Uniform State Laws, the same body that produced the Uniform Commercial Code and many of the other uniform statutes that have gained general acceptance.7 A special committee of the National Conference began its work on the Code in 1963,8 and following com-

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1Uniform Consumer Credit Code (Revised Final Draft, Feb. 1969) [hereinafter cited as UCCC].

2At the 1970 Session of the Virginia legislature, two separate studies of the UCCC were authorized. H.J.R. 106 directed the Virginia Code Commission to study the Code during the 1970-1972 interim, and S.J.R. 41 created a special Consumer Credit Study Commission to examine consumer credit problems in general, with specific attention to the UCCC. An additional study by the Virginia Advisory Legislative Council was proposed by H.J.R. 32 and S.J.R. 29, but each of these measures died in committee. 1 CCH CONSUMER CREDIT GUIDE ¶ 4771 (Feb. 4, 1971).

31 CCH CONSUMER CREDIT GUIDE ¶ 4771 (Feb. 4, 1971).


6The original version of the Uniform Commercial Code was first adopted in Pennsylvania in 1953. The next state to enact the law, Massachusetts, waited until 1957. By 1963, when Virginia seriously studied the UCC for adoption, 29 states had enacted it. VIRGINIA ADVISORY LEGISLATIVE COUNCIL, TIME TO ADOPT THE UNIFORM COMMERCIAL CODE 3-4, 597 (1963). Today, the UCC is law in 49 states, Louisiana being the only exception. 1 CCH SEC. TRANS. GUIDE ¶ 650 (May 7, 1969).


pletion of a final ninth draft in 1968, the American Bar Association endorsed the UCCC for adoption by the states. A revised final draft was issued in early 1969, and it is this draft that is being considered for adoption in Virginia.

A great deal has been written recently about the Code, both favorable and critical, particularly with reference to some of its more controversial features such as maximum interest ceilings and the "free entry" concept of licensing. Rather than take sides on any of these issues, however, this article will examine the principal effects adoption of the Code will have on existing Virginia law and consumer credit practices in the State. It is hoped that such an analysis will provide an objective perspective for assessing the particular significance of the UCCG for Virginia.

SCOPE OF THE UCCC

The UCCC would affect practically every aspect of consumer credit, including disclosures of credit terms and advertising, rates of interest and finance charges, consumers' and creditors' rights and remedies, the regulation of particular credit practices, and the licensing of lending institutions.

As a basic matter, consumer credit under the UCCC would consist of all personal credit used for consumer purposes. To qualify, such credit would have to meet each of the following tests: (a) the credit must be extended by a seller or lender regularly engaged in credit transactions; (b) the debtor must be an individual, as distinguished from an organization such as a corporation, partnership, trust or estate; (c) the sale or loan must be made for a personal, family, household or agricultural purpose, rather than a business purpose; (d) a charge must be made for the credit (that is, interest or a finance charge) or the debt

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11See text accompanying notes 97-105 infra.
12See text accompanying notes 120-123 infra.
is repayable in installments; and (e) the amount of the credit may not exceed $25,000 except where the credit is secured by an interest in land.\textsuperscript{13}

While these tests serve to limit the principal thrust of the Code to consumer credit, certain other forms of credit transactions would be affected as well. For example, the UCCC would regulate certain transactions which do not meet all of the technical standards for consumer credit, but which are termed “consumer related” transactions under the Code. Such a consumer related transaction is a sale or loan in which the amount of the credit extended does not exceed $25,000, and either (i) the debtor is an individual, or (ii) the debtor is an organization and the debt is secured by a one or two family dwelling occupied by a person “related”\textsuperscript{14} to the debtor.\textsuperscript{15} Accordingly, a bank loan of $10,000 to a corporation would not qualify as a pure consumer loan because the debtor would not be an individual and the loan would probably be used for a business purpose rather than for a personal, family, household, or agricultural purpose. But if the loan were to be secured by a deed of trust on the corporation president’s family residence, then the loan would be considered “consumer related” under the Code. Such consumer related transactions would be subject to specific rate ceilings under the UCCC but not the disclosure provisions.\textsuperscript{16}

Even transactions which are neither pure consumer credit sales or loans nor consumer related would be affected to a limited extent by adoption of the Code. That is, by establishing maximum finance charge ceilings for consumer credit and consumer related transactions, the UCCC would also repeal any existing ceilings for other types of credit transactions.\textsuperscript{17} Accordingly, a loan to an individual in excess of $25,000, which might be subject to an eight per cent annual interest limitation under present Virginia law,\textsuperscript{18} would be free from any interest ceilings under the UCCC.

\textsuperscript{13}UCCC §§ 2.104, 3.104.
\textsuperscript{14}UCCC §§ 2.602, 3.602.
\textsuperscript{15}The UCCC does not explain what is meant by a person “related” to the debtor organization, but presumably this reference contemplates, for example, an officer, director, stockholder or even an employee of a corporation.
\textsuperscript{16}UCCC §§ 2.605, 3.605.
\textsuperscript{17}In addition, consumer related transactions would be subject to UCCC provisions dealing with additional charges and delinquency charges, refinancing and consolidation, and advances to perform covenants of the debtor. UCCC § 2.602, Comment 2; § 3.602, Comment 2; see notes 93 and 95 infra.
In short, the UCCC would affect in one way or another virtually every type of business establishment which extends credit—for example, banks, small loan companies, savings and loan associations, credit unions, insurance premium finance companies, and retail merchants.\textsuperscript{19} For purposes of the remaining discussion, the provisions of the UCCC as they relate to these types of creditors will be considered in terms of the following subject matters: (1) disclosures, (2) rates, (3) licensing, and (4) consumer protections.

DISCLOSURES

The disclosure provisions of the UCCC are largely in response to Title I of the Federal Consumer Credit Protection Act, the title also known as the Federal Truth in Lending Act,\textsuperscript{20} which became effective nationwide on July 1, 1969. This federal statute and the Federal Reserve Board's Regulation Z\textsuperscript{21} which implements it, preempt all state laws except those which are deemed by the Federal Reserve Board to be "substantially similar" to the federal requirements and entitled to exemption.\textsuperscript{22} The Federal Truth in Lending Act is thus the governing law on credit disclosures in most states, including Virginia, as only a few exemptions have been granted thus far.\textsuperscript{23}

The UCCC has been designed to meet the "substantially similar" test for exemption from the Federal Truth in Lending Act.\textsuperscript{24} That is, the UCCC requires complete disclosure of the same information and in the same manner as required by the Federal Act, and presumably the

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\textsuperscript{19}The Code expressly excludes from its coverage (i) extensions of credit to government, governmental agencies and instrumentalities, (ii) the sale of insurance by an insurer, except credit life, accident and health insurance, and property and liability insurance written in connection with a credit transaction, (iii) the sale of regulated public utility and common carrier services, and (iv) disclosures and rates of licensed pawnbrokers. UCCC § 1.202.


\textsuperscript{23}To date, Maine, Oklahoma, Massachusetts and Connecticut have received exemptions. 1 CCH CONSUMER CREDIT GUIDE ¶¶ 3680-83 (Dec. 10, 1970).

\textsuperscript{24}Oklahoma, which has adopted the UCCC, was granted an exemption from the Federal Truth in Lending Act, effective June 1, 1970. 1 CCH CONSUMER CREDIT GUIDE ¶ 3681 (Aug. 5, 1970).

Like the federal law, the basic aim of the UCCC disclosure sections is to permit "informed judgments" as to the use of credit and to facilitate "shopping for credit." \textit{UCCC Prefatory Note} in CCH, \textit{NEW RULES ON CONSUMER CREDIT PROTECTION} 267 (1969).
regulations to be adopted under the Code would be identical in all material respects to the Federal Reserve Board’s Regulation Z. Accordingly, Virginia creditors whose billing procedures and forms are now in compliance with the federal law would experience no change in required disclosures with adoption of the UCCC. One important effect, however, would be to localize and consolidate the enforcement duties for the law, now the responsibility of nine separate federal agencies in those states not exempt from the Federal Act into a single state agency.

Virginia already has a comprehensive credit disclosure law which is also quite similar to the Federal Truth in Lending Act. This law, known as the Virginia Consumer Credit Code, was patterned by the 1968 General Assembly after the truth in lending bill then pending in Congress. The State Corporation Commission has prescribed regulations for use under this Virginia law which track almost exactly the format and terminology used in the Federal Reserve Board’s Regulation Z. Virginia filed a formal application for exemption from the Federal Act in 1969, but has subsequently withdrawn its application.

For the most part, the disclosure provisions of the UCCC, the Virginia Consumer Credit Code and the Federal Truth in Lending Act are parallel. There are certain differences between the Virginia law and the Federal Act, however, which might explain Virginia’s withdrawal of its application for exemption. Adoption of the UCCC, on the other hand, would appear to eliminate these deficiencies. For example,

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See UCCC Prefatory Note in CCH, New Rules on Consumer Credit Protection 266 (1969); UCCC § 6.104 (c).


In view of the present preemption of the subject by federal law, the State Corporation Commission exercised its statutory authority, VA. Code Ann. § 6.1-359 (Supp. 1970), to suspend effectiveness of the Virginia Consumer Credit Code until such time as the State may be granted an exemption. S.C.C. Order, Case No. 18621, 1969 Rep. State Corp. Comm’n at —.


Utah, one of the two UCCC states, has also withdrawn its application for exemption from the Federal Act apparently because of differences between its version of the UCCC and the federal law. Id. Oklahoma, on the other hand, the other UCCC state, has received an exemption. Note supra. Accordingly, adoption of the UCCC does not guarantee exemption from the federal law, but presumably a version of the UCCC which corrects the Virginia deficiencies, text accompanying notes infra, would be sufficient.
on certain consumer credit transactions involving security interests in residential real estate, the Federal Act provides the debtor a three day right to rescind the contract, and requires the creditor to use a specified form in disclosing that right to the debtor.\textsuperscript{34} There is no comparable measure under Virginia law,\textsuperscript{35} whereas the UCCC prescribes a right of rescission identical to that of the Federal Act.\textsuperscript{36}

In addition, the penalties for violation of the Virginia Consumer Credit Code are not as severe as those under the Federal Truth in Lending Act, the Virginia law prescribing a maximum fine of $1,000\textsuperscript{37} as against a maximum fine of $5,000 under the Federal Act.\textsuperscript{38} The UCCC penalty section contains a blank for the maximum fine;\textsuperscript{39} accordingly, if a $5,000 maximum fine is necessary for an exemption,\textsuperscript{40} the legislature could specify that amount in enacting the UCCC.

The Virginia and federal statutes and the UCCC differ as to the exclusion of broker-dealers from coverage. A broker-dealer registered with the State Corporation Commission is excluded under the Virginia Consumer Credit Code,\textsuperscript{41} whereas only broker-dealers registered with the Securities and Exchange Commission are excluded from the Federal Act.\textsuperscript{42} Broker-dealers would not be excluded from the UCCC, however, regardless of whether registered with the S.C.C. or the S.E.C. To this extent, then, the UCCC would be more restrictive than the Federal Act.

On the other hand, the UCCC would exclude licensed pawnbrokers from disclosure requirements,\textsuperscript{43} whereas neither the Virginia law nor

\textsuperscript{34} CCPA Title I § 125, 15 U.S.C.A. § 1685 (Supp. 1970); Reg. Z § 226.10.

\textsuperscript{35} The Virginia Home Solicitation Sales Act, VA. CODE ANN. §§ 59.1-21.1 to -21.6 (Supp. 1970), provides a three day right of rescission as to certain sales personally solicited and consummated in the buyer's home. Text accompanying notes 171 and 172 infra. Its application, however, is limited to sales solicited in the home. The federal right of rescission, on the other hand, applies to both sales and loans secured by residential real estate, regardless of where solicited or consummated.

\textsuperscript{36} CCPA § 5.204. The UCCC also allows rescission within three days of home solicited sales. UCCC § 2.502; text accompanying notes 169 and 170 infra. It further allows an unlimited right to rescind a referral sale. UCCC § 2.411; text accompanying note 167 infra.

\textsuperscript{37} VA. CODE ANN. § 6.1-357(b) (Supp. 1970).


\textsuperscript{39} UCCC § 5.301.

\textsuperscript{40} Such a fine would be considerably greater than the maximum fine of $1,000 for misdemeanors in Virginia. See VA. CODE ANN. § 18.1-9 (Supp. 1970).

\textsuperscript{41} VA. CODE ANN. § 6.1-358(2) (Supp. 1970); S.C.C. Reg. 3 (d).

\textsuperscript{42} CCPA Title I § 104(2), 15 U.S.C.A. § 1603(2) (Supp. 1970); Reg. Z § 226.3(b).

\textsuperscript{43} UCCC § 1.202(4). It has been suggested that the regulation of pawnbrokers is a police function, and is only remotely related to the consumer credit issue. Moo, Consumerism and the UCCC, 25 Bus. LAW. 957, 970 (1970).
the Federal Act exclude such creditors. Accordingly, even with enactment of a Virginia UCCC and its ultimate exemption from federal law, Virginia pawnbrokers would remain subject to the Federal Truth in Lending Act.44

The Federal Act covers not only actual creditors, but also persons who "arrange" for the extension of credit.45 The Virginia definition of "creditor", however, contains no reference to persons who arrange for credit.46 The final draft of the UCCC also referred only to actual creditors, but a 1970 amendment to the Code suggested by its drafters would include as a creditor "a person who in the ordinary course of business regularly extends or arranges for the extension of credit."47

Finally, the State Corporation Commission regulations fail to require the disclosure of the method for determining the amount of the finance charge on open-end (revolving) charge accounts as does Regulation Z.48 A new UCCC regulation could be made identical to the federal rule on this matter, but presumably the existing Virginia regulation could be amended where necessary by the State Corporation Commission and retained under the UCCC.

**Rates**

In the area of rate of finance charge, the UCCC would bring bold changes to the present Virginia scheme for regulation of rates. As with legislation in most other states,49 the Virginia statutes specify a basic usury rate50 and numerous special exception rates for particular types of creditors and transactions. In addition, there are differences within the statutes as to the proper method for computing the rate—that is, whether the charge is to be applied periodically at a simple rate

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44UCCC § 1.202(4), Comment.
47UCCC § 5.203, as amended, 1 CCH CONSUMER CREDIT GUIDE ¶ 5333 (Aug. 21, 1970) (emphasis added). Other differences between the UCCC and the Federal Act, relating to the disclosures of real estate closing costs, have been resolved by 1970 amendments to the Code. 3 CCH CONSUMER CREDIT GUIDE, Latest Report Letter No. 44, at 5-6 (Aug. 21, 1970).
48Compare S.C.C. Reg. 7(a) with Reg. Z § 226.7(a).
against a declining unpaid balance (actuarial method); whether the total charge is to be computed at the outset and added to the face amount of the obligation ("add-on"); or whether the charge is to be computed at the outset and retained by the creditor out of the loan proceeds ("discount"). The picture is further complicated by the authorization of special additional charges, or points, on certain transactions but not on others. The result is a complex patchwork of rate statutes that presents a formidable task to anyone attempting to understand Virginia's interest laws.

The following table, which lists the authorized rates, the prescribed methods for computation and any additional charges that may be made, illustrates the degree to which Virginia's interest rate laws have been segmented according to type of creditor and transaction.

<table>
<thead>
<tr>
<th>Creditor or Transaction</th>
<th>Rate</th>
<th>Computation Method</th>
<th>Additional Charges</th>
</tr>
</thead>
<tbody>
<tr>
<td>General (Contract)</td>
<td>8% per annum&lt;sup&gt;53&lt;/sup&gt;</td>
<td>Not specified (assumed to be actuarial method)</td>
<td></td>
</tr>
<tr>
<td>Open-end (both retail and bank plans)</td>
<td>1 ½% per month with free period of 25 days&lt;sup&gt;54&lt;/sup&gt;</td>
<td>Apply monthly rate to maximum fiscal monthly balances</td>
<td>$0.25 per extension of credit, where only 1% monthly charge made&lt;sup&gt;54&lt;/sup&gt;</td>
</tr>
<tr>
<td>Banks: Short term notes</td>
<td>½% per 30 days&lt;sup&gt;57&lt;/sup&gt;</td>
<td>Discount&lt;sup&gt;58&lt;/sup&gt;</td>
<td>2% &quot;investigation fee&quot; on bank loans of $1,000 or less&lt;sup&gt;51&lt;/sup&gt;</td>
</tr>
<tr>
<td>Installment Loans</td>
<td>6% per annum&lt;sup&gt;59&lt;/sup&gt;</td>
<td>Add-on&lt;sup&gt;60&lt;/sup&gt;</td>
<td></td>
</tr>
</tbody>
</table>

<sup>51</sup>In most cases of consumer credit, the actual yield is almost double the stated rate when computed by either the "discount" or "add-on" methods. Malcolm, The Uniform Consumer Credit Code, 25 Bus. Law. 937, 946 (1970).

<sup>52</sup> For a discussion of these laws, see Shanks, Practical Problems in the Application of Archaic Usury Statutes, 53 Va. L. Rev. 327 (1967).


<sup>58</sup>The statute provides that a bank may "receive" interest in advance on short term notes, and "charge" interest in advance on installment loans. Va. Code Ann. § 6.1-320 (Repl. Vol. 1966). The distinction between "receive" and "charge" was interpreted in a 1957 decision by the Richmond Hustings Court, Part II, in...
<table>
<thead>
<tr>
<th>Financial Institution</th>
<th>Rate Description</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Savings &amp; Loan Associations</td>
<td>8% per annum</td>
<td>Not specified</td>
</tr>
<tr>
<td></td>
<td>(assumed to be actuarial method)</td>
<td></td>
</tr>
<tr>
<td>Credit Unions</td>
<td>1% per month</td>
<td>Actuarial method</td>
</tr>
<tr>
<td>Industrial Loan Associations</td>
<td>7% per annum</td>
<td>Add-on</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2% “investigation fee”</td>
</tr>
<tr>
<td>Small Loan Companies</td>
<td>21/2% per month on $300 balance—</td>
<td>Actuarial method</td>
</tr>
<tr>
<td></td>
<td>11/2% per month on balances exceeding $300</td>
<td></td>
</tr>
<tr>
<td>Insurance Premium Finance Companies</td>
<td>3% of 1% per 30 days</td>
<td>Add-on</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$10 “service charge”</td>
</tr>
<tr>
<td>Insurance Agents</td>
<td>1% per month</td>
<td>Not specified</td>
</tr>
<tr>
<td>(fire, casualty, surety or marine)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First Mortgage Loans</td>
<td>No limit</td>
<td></td>
</tr>
<tr>
<td>Second Mortgage Loans</td>
<td>7% per annum</td>
<td>Add-on</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2% “investigation fee”</td>
</tr>
<tr>
<td>FHA and VA loans</td>
<td>No limit</td>
<td></td>
</tr>
<tr>
<td>Loans to corporations, partnerships,</td>
<td>Usury no defense</td>
<td></td>
</tr>
<tr>
<td>professional associations and real estate</td>
<td>on loans otherwise subject to § 6.1-319</td>
<td></td>
</tr>
<tr>
<td>investment trusts</td>
<td>(general contract rate) or § 6.1-320</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(bank rate)</td>
<td></td>
</tr>
</tbody>
</table>

**Richards v. White** (Doubles, J.) (dictum), as authorizing the computation of interest by discount for short term notes, and by add-on for installment loans. *Virginia Bar News*, April 1957, at 6-8. In practice, however, many banks continue to discount interest on installment paper, apparently with the blessing of the State Corporation Commission.

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Note 58 supra.

Note 59 supra.

Note 60 supra.

Note 61 supra.

Note 62 supra.
Virginia law also authorizes the collection of 2½% “supervision and inspection” fees on real estate construction loans, and 1% “processing and investigation” fees in connection with the permanent financing for real estate, regardless of the type of lender.\(^8\) In addition, lenders *principally* engaged in the business of making real estate mortgage loans for resale may charge an “initial service, investigation or processing fee” of 1%.\(^8\)

By contrast, the UCCC would establish maximum rate ceilings that would cut across the melange of type-creditor distinctions found in existing Virginia law, and would vary only according to whether the credit transaction is an installment sale, pursuant to a revolving charge.

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\(^8\)VA. CODE ANN. § 6.1-277 (Supp. 1970). As an alternative, small loan companies are authorized to use add-on rates in terms of dollars per one hundred dollars per year, the maximum permissible charges being $17 per $100 on the first $300 of balance and $12 per $100 on the remaining balance up to $1,000. VA. CODE ANN. § 6.1-271(a) (Supp. 1970). Either method will apparently produce the same yield.


\(^7\)VA. CODE ANN. § 38.1-740 (Repl. Vol. 1970). This statutory ceiling may not be charged by insurance premium finance companies until authorized by the State Corporation Commission. At present, the S.C.C. rate is ½ of 1% per 30 days, which was the statutory ceiling prior to the 1970 amendment.


\(^7\)VA. CODE ANN. § 6.1-319.1 (Supp. 1970), enacted as an emergency measure by the 1970 legislature, removed interest ceilings on loans secured by first deeds of trust on real estate which would otherwise be subject to § 6.1-318 (the “legal” rate of 6%), § 6.1-319 (the general “contract” rate of 8%), or § 6.1-320 (the bank rate). The relief provision will expire on July 1, 1972.


\(^7\)VA. CODE ANN. §§ 6.1-328 (Repl. Vol. 1966). To collect this fee, the loan must have a maturity date of 10 years or more. This fee cannot be collected in addition to the “supervision and inspection” or “processing and investigation” fees authorized on real estate loans. Text accompanying note 82 *supra.*
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account, or one of two types of loans. The Code would thus prescribe ceilings having uniform application to all the various types of credit institutions, without regard to whether such institutions are banks, savings and loan associations, credit unions, or otherwise.

In addition, the UCCC ceilings would be based upon the actuarial method of computation, thus eliminating the present confusion under Virginia law as to whether a particular statutory rate is intended as a discount or an add-on rate.

Further, the UCCC would require that the ceilings be applied to the total of all charges incident to the extension of credit (points, investigation fees, processing fees), not just the interest, and would establish uniformity as to any additional charges that may be made.

In prescribing rate ceilings for loans, the UCCC distinguishes between two types of loans: those that are "supervised" loans, and those that are not. A "supervised" loan is any consumer loan with a finance charge rate in excess of 18% per annum. The authority to make "supervised" loans is limited to lenders specially licensed for such purpose under the UCCC, and to "supervised financial organizations", defined as institutions which are authorized both to make loans and receive deposits, and which are subject to supervision by a federal or state agency. Loans with rate charges of 18% or less would not be "supervised".

The UCCC rate ceilings for "supervised" loans would be the greater of (1) the total of 36% per year on unpaid balances of $300 or

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84UCCC §§ 2.201(2), 3.201(1), 3.508.
85Note 58 supra.
86UCCC §§ 2.109, 3.109.
87Such additional charges include official fees (recording fees) and taxes; premiums for property and liability insurance where the source of such insurance is optional with the debtor; premiums for credit life, accident or health insurance where such insurance is not required; annual charges for the privilege of using certain lender credit cards; and reasonable closing costs on transactions involving real estate. UCCC §§ 2.202, 3.202, as amended, 1 CCH CONSUMER CREDIT GUIDE ¶¶ 5062, 5182 (Aug. 21, 1970). The UCCC also authorizes "delinquency charges" of the greater of 5% of the unpaid installment or the amount of a "deferral charge" disclosed to the debtor at the outset of the credit transaction. UCCC §§ 2.203, 2.204, 3.203, 3.204.
88UCCC §§3.501 (3).
89UCCC § 3.502.
90UCCC § 3.503; text accompanying notes 109 and 112 infra.
91UCCC § 1.301(17). Banks, savings and loan associations, industrial loan associations and credit unions would be "supervised financial organizations" under the UCCC. Small loan companies would not qualify, as they do not receive deposits, and thus would require special licensing under § 3.503 in order to make loans at "supervised" loan rates.
less, 21% per year on unpaid balances between $300 and $1,000, and
15% per year on balances over $1,000, or (2) 18% per year.92

For regular consumer loans, that is, those not "supervised," the
Code would provide a single rate ceiling of 18% per annum, applicable
alike to single payment and installment loans and to loans pursuant to
open end accounts.93

In the area of consumer credit sales (as distinguished from loans),
the maximum periodic charge on open end (revolving) accounts would
be 2% on balances of $500 or less, and 1 1/2% on balances in excess of
$500.94 For other credit sales, such as those under installment con-
tracts, the Code would prescribe rate ceilings identical to those for
"supervised" loans, that is, (1) 36% per year on the first $300 balance,
plus 21% per year on balances between $300 and $1,000, plus 15%
per year on balances over $1,000, or (2) 18% per year, whichever is
greater.95

The significance of the Code in this regard is not so much the ac-
tual rates prescribed for credit sales, but rather that the Code would
for the first time subject installment credit sales in Virginia to credit
charge ceilings. Under the "time price doctrine", as developed by early

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92UCCC § 3.508. Compare these ceilings with the small loan company rates
under present Virginia law. Text accompanying note 70 supra. These ceilings would
be authorized for single payment and installment "supervised" loans as well as
for open end credit plans operated by "supervised financial organizations" (bank
credit cards). But it has been suggested that in order for an open end plan to be
accorded the 36-21-15 rates under § 3.508, the periodic finance charge would have
to be imposed on the average daily balances in the period, presumably because
otherwise the charge would not be consistent with the actuarial method as required.
Braucher, supra note 8, at 320. Where the charge is imposed on a balance as of
a particular date during the period, as is often the case, the maximum rate would
be 18%, with a minimum charge of 50 cents. UCC § 3.201(4); note 93 infra and
accompanying text.

93UCCC § 3.201. The same ceiling applies to "consumer related" loans. UCCC
§ 3.602; text accompanying notes 14-16 supra.

Virginia law also authorizes an annual charge of 18% on open end plans (both
lender and retail plans). Note 54 supra and accompanying text. It does not sanction
a minimum periodic charge as does the UCCC (50 cents). UCC § 3.201(4) (c).

94UCC § 2.207. This section authorizes a minimum periodic finance charge of
50 cents. Note 99 supra.

95UCC § 2.201. A minimum finance charge of $5.00 would be authorized where
the amount financed, as defined by § 2.111, does not exceed $75.00, as would a
minimum charge of $7.50 where the amount financed exceeds $75.00. UCC §
2.201(6).

"Consumer related" sales (text accompanying notes 14-16 supra) would be sub-
ject to the 21/2% ceiling on open end accounts, and a single 18% ceiling on other
credit sales. UCC § 2.602,
Virginia case law, a credit sale has been considered technically neither a loan nor a forbearance of money, and thus not subject to the usury statutes. The UCCC would thus eliminate the "time price doctrine" in Virginia and provide an over-all regulation of rates for both sale and loan consumer credit.

A principal concern expressed by some critics is that the UCCC rate ceilings are too high, the fear being that creditors will charge the highest permissible rates. While this would be a possibility, it is the considered belief of the advising economists and the lawyers who drafted the Code that the natural forces of competition will generally produce levels of rates below the ceilings. In time, perhaps studies of the effects of the UCCC in Oklahoma and Utah will provide the best test of these predictions, but for the moment Virginia's experience with finance charge rates in installment credit sales and first deed of trust loans, where the sky is the limit in both cases, does indicate that competition alone can be effective in keeping finance charge rates within reason.

In addition, the UCCC reflects the recognition that low ceilings tend to limit the availability of legal credit only to those with the better credit standing, forcing the marginal or poorer credit risks to the illegal lenders. The need for higher rates is also directly related to the increase in consumers' rights the Code would provide, as these charges would necessarily bear on the costs in extending credit.


Text accompanying notes 76 and 96 supra.

The small loan laws, which prescribe relatively high rates, were designed to provide the high risk debtor with an alternative to the loan shark. Braucher, supra note 8, at 324; see B. Curran, Trends in Consumer Credit Legislation 16 (1965); Virginia Advisory Legislative Council, Report on the Virginia Small Loan Act, S. Doc. No. 12, at 8 (1967).

UCCC § 2.201, Comment 3; Johnson, Regulation of Finance Charges on Consumer Installment Credit, 66 Mich. L. Rev. 81, 108 (1967).
These thoughts are expressed in the Prefatory Note to the UCCC as follows:

[A] combination of too low ceiling rates, too substantial restrictions on creditors' rights and remedies, or too great enhancements of debtors' rights and remedies, might deprive the less credit-worthy of lawful sources of credit and drive them to 'loan sharks' and other illegal credit grantors in whose hands they will enjoy no legal protection...\(^{102}\)

Furthermore, in comparing existing Virginia statutory rates to the UCCC, it must be recognized that the UCCC ceilings speak in terms of the actuarial method of computation, not add-on or discount,\(^{103}\) and contemplate all of the charges incident to the extension of credit,\(^{104}\) thus encompassing many of the special charges that are now authorized by Virginia law as in addition to the statutory interest rates. Accordingly, what may at first appear to be a substantial increase by the UCCC over existing Virginia rates, is in fact not a great difference.\(^{105}\)

**Licensing**

The UCCC rate structure is necessarily linked to the Code policy on licensing of creditors. As previously stated, it is expected that competition among suppliers of credit would force finance charge rates to levels below the UCCC ceilings.\(^{106}\) In order to foster such competition, the UCCC seeks to encourage easier entry into the credit extending field by liberalizing existing state licensing requirements. This concept of "free entry" has been explained by the drafters of the Code as follows:

This section [on licensing] is intimately related to disclosure ... and to maximum charges .... The purpose is to facilitate entry into the cash loan field so that the resultant rate competition fostered by disclosure will generally force rates below the permitted maximum charges ...\(^{107}\)

\(^{102}\)UCCC Prefatory Note in CCH, NEW RULES ON CONSUMER CREDIT PROTECTION 267-68 (1969).

\(^{103}\)Note 51 and text accompanying notes 84 and 85 supra.

\(^{104}\)Text accompanying note 86 supra.

\(^{105}\)To illustrate, a bank installment loan of $1,000 would be subject to an 18% ceiling under the UCCC. Under present Virginia law, the bank may charge 6% add-on for such a loan. VA. CODE ANN. § 6.1-320 (Repl. Vol. 1966). Assuming a 24 month loan, this would be about 11.25% effective annual interest by the actuarial method. In addition, the bank would be authorized to charge an "investigation fee" of 2% of the amount of the loan. VA. CODE ANN. § 6.1-321 (Repl. Vol. 1966). Thus, rather than a 6% rate to compare to the UCCC ceiling of 18%, Virginia law now authorizes a charge of at least 13.25% on such a loan.

\(^{106}\)Text accompanying note 98 supra.

\(^{107}\)UCCC § 3.503, Comment 1.
A secondary purpose is to reduce the likelihood of establishing localized monopolies in the granting of cash credit. Such monopolies tend to push rates charged to the maximum permitted levels and to establish conditions under which some share of the anticipated monopoly profits are devoted to direct or indirect pressures to obtain the license.\textsuperscript{108}

To be specific, only those creditors engaged in the business of extending "supervised" loans—loans at rates in excess of 18% per year—would be licensed under the UCCC.\textsuperscript{109} Accordingly, there would be no UCCC licensing of persons making consumer credit sales, leases, and non-"supervised" loans. All creditors would be required, however, to file annual information notices with the UCCC Administrator,\textsuperscript{110} and to pay annual notification fees.\textsuperscript{111}

In addition, the UCCC Administrator would be required to issue licenses to applicants solely on the basis of their financial responsibility and the character and fitness of their officers and directors.\textsuperscript{112} There would be no standard restricting licensing only to those applicants who meet minimum capital requirements and can show that the convenience and advantage of the public would be served (that is, that there is a need in the community for the applicant's office). Under existing Virginia law, banks,\textsuperscript{113} savings and loan associations,\textsuperscript{114} industrial loan associations,\textsuperscript{115} and small loan companies\textsuperscript{116} are subject to convenience and advantage tests.\textsuperscript{117} But the Code would free only small loan companies from this standard, as "supervised financial organizations", which include all regulated lenders authorized to receive deposits such as banks, savings and loan associations and industrial loan associations.\textsuperscript{118}

\textsuperscript{108}UCCC § 3.503, Comment 2.
\textsuperscript{109}See UCCC § 3.502. Furthermore, not all makers of "supervised" loans would be required to obtain UCCC licenses, as "supervised financial organizations" (note 91 supra and accompanying text) would continue to be subject only to the licensing requirements of existing state law. UCCC § 3.502, Comment 1; text accompanying notes 118 and 119 infra.
\textsuperscript{110}UCCC § 6.202.
\textsuperscript{111}UCCC § 6.203. These fees would be at the rate of $10 for each $100,000 of unpaid balances owed the creditor for more than thirty days during the preceding calendar year.
\textsuperscript{112}UCCC § 3.503; see UCCC § 2.501, Comment 1(3).
\textsuperscript{117}Credit unions and insurance premium finance companies are the only regulated lenders not now subject to a convenience and advantage test. See VA. CODE ANN. § 6.1-197 (Repl. Vol. 1966) (credit unions); VA. CODE ANN. § 38.1-727 (Repl. Vol. 1970) (insurance premium finance companies).
\textsuperscript{118}Note 91 supra and accompanying text.
would continue to be subject to existing minimum capital require-
ments and standards of convenience and advantage for the establish-
ment of offices and branches.119

As a technical matter, the Code would permit such traditional non-
lenders as retailers to enter the cash loan field, banks to extend high
risk consumer loans at special small loan rates, and consumer finance
companies to establish branches without limitation.120 Considerable
concern has been expressed that these new freedoms would be to the
competitive disadvantage of institutions such as banks which would re-
main subject to restrictive licensing.121 Early reports from Utah, where
the UCCC concept of "free entry" is now in effect, indicate, however,
that there has been no great rush into the lending field by non-lending
businesses, and no major shifts of consumer credit away from the tradi-
tional sources of credit or from one such source to another.122 This is
not surprising, as there will be a natural tendency for creditors, be-
cause of economies of operation, to limit their activities to fields of
their special expertise. Such a result is not necessarily contrary to the
objectives of the UCCC, for as one proponent of the Code has observed:

While it is to be hoped that artificial market segmentation will
be broken down, we should not anticipate that there will be less
market specialization . . . . The important point is that such
specialization will be produced by economic forces and not by
victories won or lost in the halls of the state legislature.123

119See UCC § 3.502, Comment 1; UCC § 3.503, Comment 3. It has been
suggested that such institutions must remain subject to these standards for the
protection of depositors. Shay, The Uniform Consumer Credit Code: An Economist's
120Shay, supra note 119, at 511.
121American Bankers Association, An Analysis of the Economic Effects of the
Uniform Consumer Credit Code I-3 (Nov. 1968); see generally Harper, The Uniform
Consumer Credit Code and Freedom of Entry, 24 Bus. Law. 227 (1968). It has been
suggested, however, that since banks enjoy more than 43% of the consumer credit
market, they have little standing to complain of the threat from competition.
Braucher, supra note 8, at 326.
122Address by Robert N. Winston, Vice President of American Finance Manage-
ment Corporation, to the Joint Kansas-Nebraska Association, June 17, 1970. A
letter from William C. Wideman, Deputy Adm't, Consumer Credit Bureau of the
State of Utah to the Division of Statutory Research and Drafting of the Common-
wealth of Virginia indicates that there has been no rush for supervised lender licenses
in Utah. Copies of both the address and the letter are on file in the Washington
and Lee Law School Library.
123Johnson, Economic Rationale of the Uniform Consumer Credit Code, 23
J. Finance 303, 308 (1968).
Consumer Protections

Included in the UCCC are a number of important provisions designed generally to strengthen consumers' rights, and to eliminate certain credit practices commonly found to be unfair to debtors. Many of these provisions would be new to Virginia law, whereas others would produce little change. The following discussion will compare the UCCC and Virginia law on several of these consumer protection issues.

Waiver of Defenses

A subject of particular interest in the area of consumer rights is the practice of certain creditors (generally sellers of consumer goods) of assigning their credit contracts with consumers to another party, such as a bank or consumer finance company. In certain situations, such as where the credit contract is a negotiable instrument or where the contract specifically authorizes the assignment with a waiver of the consumer's defenses, the assignee takes the contract free of most claims and defenses the consumer might have against the original creditor. Such assignments are a vital part of the retail industry, as they provide an essential means for financing a retailer's business. But the practice can lead to oppressive results, particularly where the consumer who has been sold defective merchandise has no practical means of recourse against a disappearing seller, but remains liable on the contract in the hands of the assignee.

Such assignments and waivers of defenses are authorized by existing Virginia law, as the Virginia Uniform Commercial Code provides that if an assignee of a negotiable instrument is a holder in due course, he takes the instrument free from all claims and defenses of the debtor on the instrument except the defenses of infancy, incapacity, duress, illegality, fraud in the factum and insolvency. Virginia law further sanctions specific waiver of defense clauses in contracts, thus providing for the same result on instruments which are not negotiable.

The UCCC approach to this problem provides, first of all, that in a consumer sale or lease, other than one for an agricultural purpose, the seller or lessor may not take a negotiable instrument, other than a check, as evidence of the consumer's obligation. Further, the Code provides

\[\text{A holder in due course is defined as any party who takes the instrument for value, in good faith, and without notice that is overdue, has been dishonored or of any defense against it. VA. CODE ANN. § 8.3-302 (Added Vol. 1965).}\]

\[\text{VA. CODE ANN. § 8.3-305 (Added Vol. 1965). This statute is by its terms subject to any different rule for purchases of consumer goods, but there have been no reported Virginia decisions establishing a different rule for consumer goods.}\]

\[\text{UCCC § 2.403.}\]
that an assignee of a consumer negotiable instrument will not be considered a holder in due course if he knew the instrument was written in violation of the Code. With adoption of the UCCC, then, the financial community will know that a negotiable instrument taken on a sale or lease is in violation of the Code, and thus no assignee bank or finance company could claim holder in due course status.  

On the subject of specific waiver clauses in credit contracts, the UCCC offers the legislatures alternative provisions. The first alternative would subject an assignee of a consumer sale or lease contract to all of the claims and defenses of the consumer against the original creditor. The second alternative would permit a limited waiver clause that would be effective only if the assignee gives the debtor notice of the assignment, and only with respect to claims or defenses which arise, but are not asserted, before the end of a three month period after the notice is mailed. In addition, the waiver would be effective only if the assignee is not “related” to the seller or lessor, acquired the contract in good faith and for value, and had no knowledge of substantial complaints by others that the assignor fails to perform contracts or remedy defaults. Under either alternative, the debtor’s claims and defenses could be raised only as a defense or set-off against an action by the assignee, and the assignee’s liability on such claims would be limited to the amount then owing him on the contract.

In suggesting these alternatives, the UCCC thus encourages each state legislature to assess carefully the extent to which waiver of defense clauses are a problem in its particular state, and the effect an absolute prohibition of such practices would have on the normal sources of inventory financing.

Balloon Payments

The last installment on a credit sale or loan contract is sometimes in an amount larger than any of the previous installments. Such an in-

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128 UCCC § 2.403, Comment.
129 UCCC § 2.404 [Alt. A].
130 UCCC § 2.404 [Alt. B].
131 See Moo, Consumerism and the UCCC, 25 Bus. Law. 957, 967-68 (1970), suggesting that an absolute prohibition might restrict the availability of funds to small independent retailers. Indeed, it has been argued that as the usual assignee’s sole function is that of a financier who has no relation at all to the product sold or the transaction of sale, the assignee should not be responsible for the seller’s defaults. Felsenfeld, Some Ruminations About Remedies in Consumer-Credit Transactions, 8 B.C. Ind. & Comm. L. Rev. 535, 552 (1967); Kripke, Consumer Credit Regulation: A Creditor-Oriented Viewpoint, 68 Colum. L. Rev. 445, 471 (1968). On the other hand, the assignee, because of its economic leverage over the seller, may be in a better position than the individual consumer to police the practice of the seller. 68 Colum. L. Rev. at 472.
stallment may be necessary where the amount of each regular payment is insufficient to pay off the debt over the term of the obligation, and is in the nature of a "catch up" payment. Regardless of its function, however, a larger installment can come as a shock to a debtor who has become accustomed to the lower payments. For this reason, the Federal Reserve Board's Regulation Z requires the creditor to disclose the amount of each installment to the debtor and to term any payment which would be more than twice the amount of another installment a "balloon payment". With this information in hand, at least the debtor will be on notice as to the larger installment before he becomes obligated on the debt.

The UCCC goes beyond the federal law by requiring the creditor to permit the debtor to refinance any installment which is twice the average amount of the other installments, without penalty. There is no comparable requirement in existing Virginia law.

The Code further requires that on loans of $1,000, or less, if the finance charge is in excess of 10% per year, all installments must be substantially equal. The Virginia Small Loan Act contains a similar provision.

Restrictions on Collateral

As a basic matter, the UCCC limits the security interest of a consumer credit seller to the actual goods sold. Where the debt is $300 or more, the seller may also take a security interest in goods he services or in goods upon which goods sold are installed or annexed. The seller is authorized to take a security interest in land, but only if the debt is $1,000 or more, and if the goods sold are affixed to the land, or if the land is maintained, repaired or improved as a result of the sale of goods or services. Expted from these restrictions are sales for agricultural

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122Reg. Z § 226.8(b)(3).
123UCCC §§ 2.405, 3.402. This requirement does not apply in the case of sales or loans for agricultural purposes or those pursuant to open end accounts. An exception is also provided where the payment schedule accounts for the seasonal or irregular income of the debtor.
124Like Regulation Z, the regulations under the Virginia Consumer Credit Code require the disclosure of balloon payments. S.C.C. Reg. 8 (b) (3).
125UCCC § 3.511. Such loans are also limited to terms of no more than 37 months where the principal is in excess of $300, and 25 months where the principal is $300 or less.
126VA. CODE ANN. § 6.1-285 (Supp. 1970). Loans subject to this Act are limited to maximum terms of 31 months when the principal is more than $600, and 21 months where the principal is $600 or less.
127UCCC § 2.407(1). On a consumer lease, the lessor is prohibited from taking a security interest in any of the lessee's property. UCCC § 2.407(2).
purposes, where the credit seller is free to take a security in any of the debtor's property. By contrast, there are no limitations in Virginia law as to collateral on consumer credit sales and leases.

With respect to consumer loans, the UCCC forbids lenders to take security interests in real estate if the principal of the loan is $1,000 or less. This restriction has application, however, only to "supervised" loans (finance charges in excess of 18%). A similar restriction is found in the Virginia Small Loan Act.

Wage Assignments

An assignment of the debtor's wages is sometimes required by the creditor as security on a credit obligation. Such assignments of wages are valid in Virginia provided they are made in strict compliance with the statutory form and procedure, and then only to the extent the wages exceed the statutory garnishment exemptions. The UCCC, on the other hand, contains an absolute prohibition against assignments of wages.

Confessions of Judgment

Occasionally, a consumer loan or credit sale contract will contain a provision whereby the debtor authorizes a named person (usually an agent of the creditor) to enter (confess) judgment against him if he should default on the obligation. Where the debtor agrees to such a provision, the creditor may be able to obtain judgment on default without first having a hearing on the debt.

Confessions of judgment are authorized under Virginia law, although the debtor is allowed a hearing on the matter if he raises timely defenses after the judgment is docketed. But the UCCC policy is to provide the consumer a right to hearing before judgment, and thus the Code prohibits all confession of judgment clauses in credit contracts and notes and renders them void.

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138This exception is apparently provided because of an established practice in agricultural sales. See UCCC § 2.407, Comment 5.
139UCCC § 3.510(i).
143UCCC §§ 2.410, 3.403. The concern here is the need for a steady family income.
146UCCC §§ 2.415, 3.407.
Deficiency Judgments

Where a credit obligation is secured by collateral, the question arises as to whether a creditor who repossesses the collateral on default but is unable to dispose of the property for the full value of the debt may sue the debtor for the deficiency. Under the Virginia Uniform Commercial Code, both repossession of the collateral and suit for deficiency judgment are authorized unless the parties have agreed otherwise. 147

The UCCC departs from the Uniform Commercial Code in this regard by limiting a seller of consumer goods and services, where the cash price is $1,000 or less, to an election of remedies—repossession or suit for judgment—but not both. 148 In addition, if the seller elects to sue for the debt, rather than repossess, the Code provides that thereafter the goods sold will not be subject to levy on execution of the judgment. 149

Existing Virginia law on deficiency judgments would be unchanged as to credit sales of more than $1,000. The drafters of the Code have thus made a policy distinction based on the value of the merchandise. Where the original cash price is relatively small—under $1,000—the repossessed merchandise (clothing, household goods) is likely of little or no resale value, and thus repossession may serve no real purpose other than harassment of the debtor. On the higher priced items, there seems to be greater equity in favor of the creditor who disposes of the repossessed merchandise, such as an automobile subject to a year's depreciation, but is left with a sizeable unpaid balance owing him. 150

Attorney’s Fees

The UCCC contains specific limitations on agreements that the debtor will be responsible for the creditor's attorneys’ fees in the event collection proceedings are necessary. In the case of “supervised” loans of $1,000 or less, the Code prohibits any agreements as to attorneys’
fees.\textsuperscript{151} With respect to other consumer loans and sales, the Code offers alternative provisions: either an absolute prohibition of such agreements,\textsuperscript{152} as with "supervised loans", or a limitation of the debtors' responsibility for attorneys' fees to 15\% of the unpaid debt.\textsuperscript{153}

Such restrictions on agreements for attorneys' fees reflect the policy of treating these expenses, at least to some extent, as part of the creditor's cost of doing business, which may be taken into account in determining the finance charge rate to be applied on a particular transaction.\textsuperscript{154}

There are no similar limitations expressed in the existing Virginia statutes,\textsuperscript{155} and the more recent Virginia decisions have held agreements obligating the debtor for attorneys' fees proper, if the fees charged are reasonable.\textsuperscript{156}

\textbf{Prepayment and Rebate of Unearned Finance Charge}

The UCCC specifically authorizes the prepayment in full before maturity of a consumer credit sale or loan, without penalty.\textsuperscript{157} Where such prepayment is made, the creditor is required to rebate to the debtor any portion of the paid finance charges which were unearned on the obligation as of the date of prepayment, calculated in accordance with the Rule of 78.\textsuperscript{158}

There is considerable variance in the Virginia statutes as to when and under what conditions prepayment is authorized. To illustrate, the

\begin{footnotesize}
\begin{enumerate}
\item UCCC § 3.414.
\item UCCC §§ 2.413 [Alt. A], 3.404 [Alt. A].
\item UCCC §§ 2.413 [Alt. B], 3.404 [Alt. B].
\item See UCCC § 2.413 [Alt. A], Comment and [Alt. B], Comment.
\item The Virginia Small Loan Act prohibits the collection on loans subject to that Act of any charges in addition to the authorized interest. VA. Code Ann. § 6.1-278 (Repl. Vol. 1966). This statute could be construed as preventing the charging of collection costs and attorneys' fees to the debtor.
\item Parksley Nat'l Bank v. Accomac Banking Co., 166 Va. 459, 186 S.E. 38 (1936); Conway v. American Nat'l Bank, 146 Va. 357, 131 S.E. 803 (1926); Colley v. Summers Parrott Hardware Co., 119 Va. 439, 89 S.E. 906 (1916). Earlier cases had held such agreements void as imposing illegal penalties. Fields v. Fields, 105 Va. 714, 54 S.E. 498 (1892). The holding in both the Fields and Rixey cases was overruled by the court in Colley. 119 Va. at 445, 89 S.E. at 908.
\item UCCC §§ 2.209, 3.209. This privilege does not apply to a sale or loan involving real estate where the finance charge is less than 10\% per year, as such a transaction is not a consumer credit sale or loan as defined by the UCCC. In addition, partial prepayment is not an absolute privilege and may be made only if allowed by the creditor. UCCC § 2.209, Comment; UCCC § 3.209, Comment.
\item UCCC §§ 2.210, 3.210. On installment loans and sales, the creditor is permitted to retain a minimum finance charge of $5.00, where the amount financed was $75.00 or less, or $7.50, where it exceeded $75.00. The Rule of 78 is explained in paragraph (g) of UCCC §§ 2.210 and 3.210.
\end{enumerate}
\end{footnotesize}
following table lists those situations in which the privilege of prepayment is required by statute, together with any authorized penalties or prescribed rebates:

<table>
<thead>
<tr>
<th>Type of Loan or Creditor</th>
<th>Penalty</th>
<th>Rebate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Savings &amp; Loan Associations</td>
<td>2%</td>
<td>None</td>
</tr>
<tr>
<td>Credit Unions</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>First mortgage loans of $75,000 or less</td>
<td>1%</td>
<td>None</td>
</tr>
<tr>
<td>Industrial loan associations</td>
<td>None</td>
<td>Rule of 78, less charge on next 6 installments</td>
</tr>
<tr>
<td>Small loan companies</td>
<td>None</td>
<td>Yes, but no prescribed method</td>
</tr>
<tr>
<td>Second mortgage loans</td>
<td>None</td>
<td>Rule of 78</td>
</tr>
<tr>
<td>Insurance premium finance companies</td>
<td>None</td>
<td>Yes, but no prescribed method</td>
</tr>
</tbody>
</table>

The UCCC would thus provide needed uniformity in Virginia as to prepayment and rebate of unearned finance charges.

Referral Sales

A form of sales practice that has been a subject of considerable attention in Virginia in recent months is the referral sale or "pyramid promotional scheme". This is the practice whereby a customer is induced to enter into a contract for the purchase of goods or services on the promise that he will receive a rebate or discount for every additional customer he refers to the seller. In practice, as the scheme expands, the customer receives little rebate or discount, if any. The UCCC not only prohibits such practices, but authorizes a consumer who has been sold goods or services in such a scheme to keep the merchandise or the benefit of the services without obligation to pay for them.\textsuperscript{107}

\textsuperscript{112}Information supplied by Bureau of Insurance, Virginia State Corporation Commission.
\textsuperscript{113}UCCC § 2.411.
Responding to a recent spread of such schemes in Virginia, the 1970 General Assembly outlawed these practices as misdemeanors, and rendered any contracts written in pyramid or referral plans unenforceable. Although the UCCC and the Virginia statute are written in different terms, they seem to have a similar purpose and effect.

Home Solicitation Sales

Another sales practice that has been the subject of considerable consumer complaint is the purchase solicited at the buyer's residence. Because of a belief that such sales often involve high pressure tactics that are not present to the same degree in sales transacted in a store, the UCCC provides the consumer a right to cancel any credit sale contract personally solicited and consummated in his residence, provided the right is exercised by midnight of the third business day following the date the contract was signed. The Code also requires the creditor to explain to the consumer his right to cancel, using a prescribed form of disclosure.

There is an almost identical measure in existing Virginia law, known as the Virginia Home Solicitation Sales Act. The two laws differ, however, in that the Virginia statute exempts from coverage home sales by a seller owning a retail merchant's license and having an established place of business in Virginia (which may be the seller's dwelling house) within 75 miles of the buyer's residence.

Garnishment Exemptions

With the Federal Consumer Credit Protection Act, Congress has moved into the area of creditors' remedies by prescribing certain exemptions from garnishment. Under this law, which became effective July

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169 UCC § 2.502; see UCC § 2.501, Comment 1. This right is an extension of the three day right of rescission provided by the Federal Consumer Credit Protection Act for consumer credit transactions involving residential real estate. Text accompanying notes 34 and 36 supra. The Federal Trade Commission has proposed a similar rule for door-to-door sales of $10 or more. 3 CCH CONSUMER CREDIT GUIDE ¶ 10,451 (Feb. 4, 1971) (if the right is exercised by five o'clock P.M. of the third business day following the date the contract is signed).

170 UCC § 2.503.


1, 1970, a judgment creditor may garnish only the lesser of (i) 25% of the debtor's disposable weekly earnings, or (ii) the amount by which his disposable weekly earnings exceed 30 times a prescribed federal minimum hourly wage (presently $1.60). A debtor is thus insured of at least $48.00 per week free from garnishment process. In order to conform the Virginia law to the Federal Act, the 1970 General Assembly amended the State garnishment statute to provide identical exemptions. The UCCC differs from the federal and Virginia laws slightly by providing a minimum exemption of 40 (not 30) times the federal minimum hourly wage. Accordingly, the UCCC would protect a minimum of $64.00 of a debtor's weekly wages from garnishment.

Discharge from Employment

Aside from its value as a debt collection tool, garnishment may unfortunately result in the firing of an employee from his job by an employer who is being bothered with garnishment papers. In order to limit this result, the Federal Consumer Credit Protection Act prohibits the discharge of an employee because of garnishment for any one indebtedness. A similar prohibition against discharges has been added to the Virginia statutes.

The UCCC goes beyond the federal and Virginia statutes by prohibiting employment discharges by reason of any number of garnishments, and regardless of the number of debts. That is, whereas neither the federal nor Virginia laws would deny an employer the right to fire an employee because of garnishments on multiple debts, the UCCC would. In addition, the Code would authorize an employee discharged in violation of the statute to bring an action to recover up to six weeks lost wages and an order reinstating him to his job.

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175 VA. CODE ANN. § 34-29 (Repl. Vol. 1970). The Virginia law extends these exemptions to wage assignments, whereas the Federal Act does not. See text accompanying notes 141 and 142 supra.
176 UCCC § 5.105. The UCCC Comment explains that the extra exemption was thought justified in consumer transactions. The exemption does not expressly apply to wage assignments, however. See note 175 and text accompanying notes 141 and 142 supra.
177 CCPA Title III § 304, 15 U.S.C.A. § 1674 (Supp. 1970). Violation of this statute is a crime subject to a fine of $1,000 or one year imprisonment, or both.
179 UCCC § 5.106.
180 UCCC § 5.202(6).
CONCLUSION

The Uniform Consumer Credit Code, in its pure form, would produce bold changes from traditional concepts of credit regulation in Virginia, particularly in the areas of rate ceilings and licensing. For this reason, considerable controversy concerning the Code can be anticipated. It should be apparent from the preceding discussion, however, that the present Virginia laws on consumer credit are in serious need of modernization and clarification. To a degree, the Virginia legislature has taken strides in this direction with, for example, the Virginia Consumer Credit Code,181 the statute prohibiting pyramid promotions,182 and the Home Solicitation Sales Act.183 But at best these steps represent piecemeal reform, only a partial response to the growing complexity of consumer credit problems. The UCCC, on the other hand, offers Virginia an opportunity to approach the entire subject of consumer credit with a single, comprehensive code of law that attempts to balance the legitimate interests of consumers and the credit industry alike. Whether the UCCC provides a proper balance is of course open to debate, but as the Code reflects a great amount of responsible study of the subject, it is worthy of serious and fair consideration for Virginia.

ADDENDUM

Wyoming adopted the UCCC on February 28, 1971, to go into effect on May 21, 1971.184 The Indiana legislature has enacted a bill to adopt the Code which, when signed by the Governor, will go into effect on October 1, 1971.185

181 Text accompanying notes 27-32 supra.
182 Text accompanying note 168 supra.
183 Text accompanying notes 171-72 supra.
184 Information obtained from the Wyoming State Library.
185 Information obtained from the Wyoming State Library.
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