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Report to the Colorado General Assembly:

# CONSUMER PROBLEMS IN COLORADO

## LEGISLATIVE COUNCIL

## OF THE

## COLORADO GENERAL ASSEMBLY


Senators

Floyd Oliver, Chairman
Fay DeBerard
Vincent Massari
L. T. Skiffington
Ruth Stockton
Robert L. Knous,
Lt. Governor

Representatives

C. P. (Doc) Lamb, Vice Chairman
Forrest Burns
Allen Dines, Speaker
Richard Gebhardt
Harrie Hart
Mark Hogan
John R. P. Wheeler


* * * * * * * * *

The Legislative Council, which is composed of five Senators, six Representatives, and the presiding officers of the two houses, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

During the sessions, the emphasis is on supplying legislators, on individual request, with personal memoranda, providing them with information needed to handle their own legislative problems. Reports and memoranda both give pertinent data in the form of facts, figures, arguments, and alternatives.

# CONSUMER PROBLEMS
# IN COLORADO

Legislative Council

Report to the

Colorado General Assembly

Research Publication No. 112

November 1966

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Chairman
Rep. C.P. (Doc) Lamb
Vice Chairman

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# COLORADO GENERAL ASSEMBLY

## LEGISLATIVE COUNCIL

ROOM 341, STATE CAPITOL
DENVER, COLORADO 80203
222-9911 - EXTENSION 2285

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Sen. Fay DeBerard
Sen. William O. Lennox
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Sen. Ruth S. Stockton

Speaker Allen Dines
Rep. Forrest G. Burns
Rep. Richard G. Gebhardt
Rep. Harrie E. Hart
Rep. Mark A. Hogan
Rep. John R. P. Wheeler

November 29, 1966

To Members of the Forty-sixth Colorado General Assembly:

In accordance with the provisions of House Joint Resolution No. 1024, 1965 session, the Legislative Council submits the accompanying report and recommendations relating to consumer problems in Colorado.

The report and recommendations of the committee appointed to conduct a study of consumer problems were accepted by the Council at its meeting on November 28, 1966, for transmission to the members of the Forty-sixth General Assembly.

Respectfully submitted,

Senator Floyd Oliver
Chairman

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Rep. Richard G. Gebhardt
Rep. Harrie E. Hart
Rep. Mark A. Hogan
Rep. John R. P. Wheeler

October 21, 1966

Senator Floyd Oliver, Chairman
Colorado Legislative Council
Room 341, State Capitol
Denver, Colorado

Dear Mr. Chairman:

Your committee appointed to conduct "a study of consumer problems for the purposes of determining if Colorado law is adequate to safeguard the rights of its citizens from questionable sales devices and individuals" has completed its activities for 1965-66 and submits the accompanying report and recommendations.

As may be noted from the committee's report, the members were able to consider a number of subjects concerning consumer problems in Colorado and to prepare several measures thereon for legislative consideration. However, additional work in many areas involving business-consumer relations would be of substantial value, and the committee is therefore recommending the continuation of this study.

Respectfully submitted,

Representative John R. P. Wheeler,
Chairman, Committee on Consumer Problems

JRP/mp

# FOREWORD

House Joint Resolution No. 1024, 1965 regular session, included the directive that the Legislative Council was to undertake a two-year study "of consumer problems for the purpose of determining if Colorado law is adequate to safeguard the rights of its citizens from questionable sales promotion devices and individuals," including such specific subjects as problems of land subdivisions, disclosure and amount of interest rates, collection practices, causes of bankruptcies, and a continuing review of funeral and pre-need practices. The membership of the committee appointed to carry out this assignment included:

Rep. John R. P. Wheeler, Chairman
Rep. Gerald Kopel, Vice Chairman
Senator James C. Perrill
Senator Roy Romer
Senator Ed Scott
Senator Paul E. Wenke
Rep. Ray H. Black
Rep. John S. Carroll
Rep. Ralph A. Cole
Rep. Victor B. Grandy
Rep. James LaHaye
Rep. Paul Morris
Rep. Donald Strait
Rep. John D. Vanderhoof

Senator Floyd Oliver, chairman of the Legislative Council, also served as an ex officio member of the committee.

Following the appointment of the committee, the members began their assignment by reviewing the work of the 1964 Council Committee on Consumer and Funeral Problems and related action taken by the General Assembly in the 1965 regular session. The members thereupon agreed on several specific topics to consider prior to submitting its report and recommendations to the Legislative Council in November of 1966. It is to the credit of this committee that the major goals it set out to consider were completed for the most part during its relatively limited life span.

Phillip E. Jones, senior research analyst for the Legislative Council, had the primary responsibility for the staff work on this study, with the aid of Roger M. Weber, research assistant. Mr. James C. Wilson, Jr., assistant attorney general, Legislative Reference Office, had primary responsibility for the bill drafting services provided the committee.

November 28, 1966

Lyle C. Kyle
Director

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## COMMITTEE FINDINGS AND RECOMMENDATIONS

State and local governments, as well as the federal government, have long been active participants in the day-to-day transactions of the market place involving buyers and sellers. The types of governmental participation range from issuing licenses to operate a business to enforcing strict requirements as to the quality and contents of food and drugs. Various rules of conduct in the market place have been established both for buyers and for sellers in order to develop generally-accepted practices for buyer-seller transactions and to eliminate the "buyer beware" policies that prevailed in the past.

On the other hand, however, this policy of governmental participation does not mean the establishment of a "seller beware" situation where there is an imbalance between the powers of buyers and sellers. In fact, the ultimate goal of government participation, whether at the state, local, or federal level, should be free and open competition among sellers accompanied by full and honest disclosure for the buyers as to that product or service which is being offered.

In Colorado, as elsewhere, problems of consumers also represent problems of the legitimate businessmen who rely on ethical merchandising methods and who are tainted with the brush wielded by the relatively few shady operators in their midst. As a result, committee members approached their assignment with the feeling that any proposal resulting from their study of consumer problems in Colorado would be designed not only to protect consumers but to assist the legitimate businessman as well. In fact, without the knowledge and counsel provided by representatives of various business and professions, it is quite doubtful if the members would have been able to have completed as much of their assignment as they have and to have reached what the committee believes to be sound and fair recommendations for everyone concerned.

Under the provisions of House Joint Resolution No. 1024, 1965 session, the Legislative Council was directed to undertake "a study of consumer problems for the purposes of determining if Colorado law is adequate to safeguard the rights of its citizens from questionable sales promotion devices and individuals. Said study shall include, but not be limited to, the problem of land subdivisions, disclosure, and amount of interest rates, collection practices, causes of bankruptcies, a continuing review of funeral and preneed practices, and other consumer practices."

Members of the committee appointed by the Legislative Council to carry out this directive of the General Assembly reviewed their assignment at the committee's first meeting, and the members agreed to consider the following specific subjects during 1965 and 1966: subdivisions, proprietary schools, the feasibility of a consumer

protection agency, misleading advertising, door-to-door sales, disclosure, amount of interest rates, collection practices, causes of consumer bankruptcies in Colorado, and a review of preneed funeral changes adopted in the 1965 session and their administration. In the course of its activities, the committee held meetings on June 21, July 30, September 17, October 22, November 23, and December 3, 1965, and on April 1 and 29, May 20, July 12, 26, and 27, August 26 and 27, September 14, and October 21, 1966.

As a result of these meetings, the committee was able to develop information and reach conclusions and recommendations on all of the subjects it intended to consider except, due to lack of time, causes of consumer bankruptcies and collection practices. In fact, following the committee's work during the 1965 interim, a bill recommended by the committee to regulate proprietary schools was, with minor amendments, enacted by the General Assembly in the 1966 session and was approved by the Governor (Chapter 39, Session Laws of 1966).

Generally speaking, where consumer problems are concerned, legislation may be classified either as of a horizontal nature encompassing the broad spectrum of consumer problems as a whole or of a perpendicular nature dealing with a specific consumer problem. Based on its study, the committee concluded that both types of legislation are necessary for Colorado, as may be noted from the following report of the committee's findings and recommendations.

## Consumer Protection Agency

Over the years, the role of state governments with respect to consumer protection programs has evolved, in several states at least, in the expansion of existing agencies or the creation of new agencies to place increased and continuing emphasis on providing protection to consumers and the legitimate businessman. As may be noted from the information contained in the accompanying research report, there are three or four different approaches being followed in conducting these relatively new programs.

In Connecticut, a number of separate programs have been combined into one department of state government, headed by a commissioner, as follows: food and drugs, weights and measures, athletic events, kosher meat inspection, pharmacies, and consumer frauds which was added in 1965.

The Massachusetts Consumers' Council was created in 1963, with council members consisting of several state officials, including the Attorney General, and eight private citizens. This council, with the assistance of its three-member staff, serves to coordinate consumer services provided by other state agencies, to conduct studies of consumer problems, to advise the executive and legislative branches in matters affecting consumer interest, to further consumer education and to keep the public informed in matters of

consumer interest, and to inform law enforcement agencies of violations of laws or regulations affecting consumers.

California's Consumer Counsel, who is part of the Governor's Office, may be described, in a sense, as a one-woman Massachusetts Consumers' Council, having similar statutory powers and duties.

In at least ten states, consumer protection bureaus have been created within the office of the Attorney General. The general duties assigned to these bureaus are much the same as those carried out under the programs in California, Connecticut, and Massachusetts. The major difference appears to be that the programs under the Attorneys General play a more direct role in enforcement matters with relatively little or no emphasis being placed on serving as a spokesman for consumers before governmental bodies.

The committee recognizes the need for an increased program of protection and service for the consumers of Colorado at the state level. At the same time, the committee recognizes the need to provide this program in the most efficient and economical manner possible consistent with achieving program objectives. The committee therefore recommends the adoption of the accompanying Bill A providing for the addition of a consumer fraud division in the Attorney General's Office. The committee further recommends that, if this division is established, it should be properly financed for the fiscal year beginning on July 1, 1967.

Under the provisions of Bill A, the purposes of this act are to provide an agency of state government under the department of law which will implement and assist regulatory and law enforcement agencies of the state and its political subdivisions in the detection, prevention, and prosecution of fraudulent and unethical operators in this state; which is oriented to act and speak in behalf of the consuming public of this state; which will be a central clearinghouse for the receipt and dissemination of information concerning consumer fraud schemes and operators; and which will recommend to the General Assembly such legislation as may be necessary to protect consumers from false and misleading practices.

The committee believes that the proposed consumer fraud division, working in conjunction with existing state and local regulatory and law enforcement officials, and with existing consumer and business groups, will do much in the way of correcting existing and future problems of consumers and the legitimate businessman, but additional measures are also needed to provide essential tools which this proposed office and others can use to function more effectively.

## False and Misleading Advertising

Colorado has had a false and misleading advertising law since 1915, based on a model law proposed by Printer's Ink. The model law

has been updated by Printer's Ink to meet problems encountered in our present society and corresponding changes have been incorporated in the false and misleading advertising laws of many of the states. Colorado's law, however, has never been amended.

The result is that certain types of misleading advertising do not come under the provisions of Colorado's law. Moreover, because of the presence of vague and ambiguous language in this law, district attorneys hesitate to bring charges thereunder.

Advertising represents one of the most essential ingredients in the market-place relationship between buyer and seller. Its sanctity must be preserved. The committee therefore recommends that, as contained in Bill B, Colorado's false and misleading advertising law should be amended to prohibit bait-and-switch advertising, or where an item is advertised for a ridiculously low price, with the merchant not intending to sell the advertised item, and the would-be buyer is subjected to pressure to "switch" to a higher-priced version of the same type of item. The law should also prohibit the use of phony price comparisons which are not only misleading but also tend to cause consumers to lose faith in advertising generally. The law's provisions should also be modernized to include exemptions for radio and television stations in the same manner as exemptions are presently provided for publishers of newspapers and periodicals.

## Subdivision Regulations

In 1963, the General Assembly enacted a law to provide for the registration of subdivision developers in Colorado and to authorize the Real Estate Commission to suspend a registration under certain conditions. The constitutionality of these provisions has been seriously questioned and, in two district courts, this law has been held to be unconstitutional.

The citizens of Colorado live in a state that abounds with natural beauty and resources, as well as a few bare spots here and there. The orderly development of subdivisions in our areas of beauty seems imperative in terms not only of the present but for the future as well. There are several problems connected with the present situation. Some of these result from fraudulent land promotions; others result from the lack of adequate authority for counties to regulate the development of subdivisions within their jurisdictions. Measures need to be taken to provide corrective authority both at the state and county level.

The committee therefore recommends the favorable consideration of Bill C. In addition to providing for the registration of subdividers with the Colorado Real Estate Commission, this bill would recognize the commission as a center of information for prospective buyers, counties, and others with respect to subdivision

developments and subdividers. More specific statutory guidelines would be included in the law for the commission to follow when considering the suspension or revocation of any registration.

In brief, this bill would enable the commission to assist prospective buyers before they invest their funds in a subdivision development and would assist the counties by providing county officials with details on proposed subdivisions and by requiring surveys by a registered or licensed land surveyor and the filing of a plat with the county clerk and recorder. Subdividers would also be required to file a statement of the provisions for legal access, sewage disposal, and public utilities, including water, electricity, gas, and telephone facilities in connection with a proposed subdivision, as well as a statement of any warranties proposed to be made in the advertising of the sale of lots therein.

Bill C would also require subdividers to make disclosures to any purchaser with respect to any deed of trust, mortgage, or other creditor's lien affecting the land sold and the existence of special assessments or bonded indebtedness levied by any political subdivision or public authority on the land. No lot or parcel of land could be sold that is subject to a blanket encumbrance unless provision is made to provide that the purchaser can obtain legal title free and clear of the blanket encumbrance upon compliance with the terms and conditions of the purchase. Requirements for escrow and trust accounts would be provided by this bill, and a bond not to exceed $100,000 for the benefit and protection of purchasers would have to be filed with the commission by subdividers registering under the provisions of this bill.

## Consumer Credit

Consumer credit in Colorado, where regulated at all, is governed by several state laws. Credit rates on small loans made by state and national banks, revolving charge accounts, and credit card programs do not come under these laws.

The various state laws applying to consumer credit include the general interest rate law, the Consumer Finance Act of 1955 (for loans of not more than $1500), the Money Lenders Act of 1913 (for loans in excess of $1500), the industrial bank act, the credit union loan law, the Retail Motor Vehicle Installment Sales Act of 1951, and the Retail Personal Property Installment Sales Act of 1959.

Understandably, in view of the slightly different objectives of each of these laws and the varying dates when enacted, many of their specific provisions are not uniform. Yet many of these provisions are intended to apply in much the same situation under similar or identical circumstances. The result is that, all too often, the consumer is confused as to the costs of consumer credit financing

and his rights and obligations under the various types of financing arrangements.

The committee therefore recommends revising and consolidating the provisions of four of these laws into two over-all acts -- the two retail installment sales laws into one act, as in Bill D, and the consumer finance and money lenders laws into another act, as in Bill E. Because of the substantive area covered by these two bills and the size of the drafts themselves, the committee has included comments in each of these drafts as to the source of the language in the bills and the changes contained therein.

Briefly, however, Bill D would establish qualifications for applicants of a sales finance company; would allow a buyer to rescind a retail installment contract with a seller exempt from the licensing requirements of this act for the same reasons as are presently allowed a buyer in the case of such a contract with a licensed seller; would spell out details of a retail installment sales contract and the obligations of a buyer and seller under the contract's provisions, as well as clarifying the various items involved with respect to the time price differential; would provide specific guidelines for a seller to follow when considering repossion; would remove authorization for sellers to collect attorney's fees in court cases; would remove the authorization of an acquisition cost at the rate of five dollars per 100 dollars but not to exceed 15 dollars; and would expand coverage of the law to include revolving charge accounts or credit agreements with a maximum finance charge of one and one-half per cent per month on the unpaid balance. The bill would not change the maximum rates of charge for the time price differential on retail installment sales contracts that are authorized by the two present laws.

Bill E, combining the consumer finance act and the money lenders act, broadens its scope of coverage to include persons acting as loan brokers and "money finders." This bill also would spell out details of a consumer loan contract and the obligations of a lender and borrower thereunder; would clarify and strengthen administrative provisions in the act; would not allow attorney's fees as a part of collection expenses of a lender; and would increase the penalty where a lender intentionally overcharges on a loan to include forfeiture of the first $300 of the principal.

In addition, so far as loans in excess of $1500 are concerned, Bill E would reduce the maximum monthly interest rate on the unpaid balance from two per cent to one and three-fourths per cent; maximum rates presently allowed by law on loans of $1500 or less would remain unchanged. In other words, the effective monthly simple interest rates on loans made under the maximum rates provided in this bill would be as follows, when paid in full according to the contract:

| Cash Advance | Effective Monthly Simple Interest Rate |
|---|---|
| $ 100 | 3.00% |
| 200 | 3.00 |
| 300 | 3.00 |
| 400 | 2.88 |
| 500 | 2.72 |
| 600 | 2.56 |
| 700 | 2.42 |
| 800 | 2.29 |
| 900 | 2.19 |
| 1,000 | 2.09 |
| 1,100 | 2.01 |
| 1,200 | 1.94 |
| 1,300 | 1.88 |
| 1,400 | 1.83 |
| 1,500 | 1.78 |
| 1,501 and over | 1.75 |

Door-to-door Sales

Direct sales to consumers in their homes represent a sizeable industry in Colorado and is one which provides numerous services for housewives. At the same time, however, certain practitioners in this industry seem to view direct sales to consumers in their homes as no more than an opportunity to make a fast buck off the unwary. Oral promises that are totally misleading and worthless accompanied by fast-talking, high-pressure salesmen are the stock in trade of these people who perform a disservice to the customers and to the direct sales industry in general as well.

In order to strike at the heart of this problem, the committee recommends the adoption of Bill F. If enacted, Bill F would allow victims of the hard sell technique in their homes to have 24 hours in which to reconsider their action and to have an opportunity to check on the oral promises made by the salesman, or salesmen, since many of these persons operate in teams to place added pressure on the prospective buyer. At the same time, the provision for a 24-hour reconsideration period would not apply to contracts where the value of the product or service does not exceed $100 and does not include the making of a promissory note or installment contract. These provisions also would not apply to contracts of insurance, corporate shares, investment fund certificates, debentures, real property and any fixtures then attached thereto, live animals, and any agricultural products except food.

## Preneed Funeral Plans

The committee is pleased to report that the 1965 amendments to the state's preneed funeral plan law, which were based on recommendations of the 1964 Legislative Council Committee on Consumer and Funeral Problems, are working out very well. Based on the first year of experience in the administration of the amended law, a few additional changes seem desirable and these suggested changes are contained in Bill G prepared by the committee. These changes would clarify the definition in the law as to contracts and the coverage of persons thereunder, and would include contracts professing to provide services of any nature with respect to funeral arrangements. This bill would also change the figure authorized as liquidated damages for a contract seller from 15 per cent of the contract price to 15 per cent of the amount paid by the contract purchaser.

## Causes of Consumer Bankruptcies

The committee completed a preliminary inquiry into the causes of consumer bankruptcies in Colorado. The major causes appear to be overborrowing or the overextension of credit, wages being garnisheed or threatened to be garnisheed or attached, and unexpected medical and hospital expense. The committee believes that, if no corrective action is taken in the 1967 session with respect to the causes of consumer bankruptcy, the Legislative Council should be directed to study this matter following the 1967 session, using the preliminary information developed by this committee as a foundation for its study.

## Agriculture and Food Prices

The committee recognizes that the General Assembly cannot establish minimum prices on food products sold in this state, but there are certain areas relating to food and the consumer that come within the purview of state legislative action. We recommend that, if sufficient corrective action is not taken in the 1967 session with respect to laws relating to consumers and the food they buy, the Legislative Council should be directed to study this matter following the 1967 session, specifically in regard to (1) the lack of an intrastate meat inspection law in Colorado, (2) enforcement powers in the State Department of Agriculture for the dyed meat law, and (3) more realistic inspection methods of food products.

## Continuation of Study of Business and Consumer Problems

The committee recognizes that many areas of consumer-business relations were not fully developed during its period of existence.

These include, but are not limited to, collection agencies, trading stamps, and credit cards. Colorado is the only state in the nation that has a Legislative Council Committee on Consumer Problems. We recommend that the study of business and consumer problems be continued following the 1967 session.

Bill A

1 A BILL FOR AN ACT

2 PROVIDING FOR A CONSUMER FRAUD DIVISION UNDER THE DEPARTMENT
3 OF LAW.

4 Be It Enacted by the General Assembly of the State of Colorado:

5 SECTION 1. Legislative declaration. The general assembly
6 declares that the purposes of this act are to provide an agency
7 of state government under the department of law which will imple-
8 ment and assist regulatory and law enforcement agencies of the
9 state and its political subdivisions in the detection, prevention,
10 and prosecution of fraudulent and unethical operators in this
11 state; which is oriented to act and speak in behalf of the con-
12 suming public of this state; which will be a central clearing-
13 house for the receipt and dissemination of information concerning
14 consumer fraud schemes and operators; and which will recommend
15 to the general assembly such legislation as may be necessary to
16 protect consumers from false and misleading practices; therefore,
17 the provisions of this act are enacted in the exercise of the
18 police powers of this state for the purpose of protecting the
19 health, safety, and general welfare of the people of this state.

20 SECTION 2. Definitions. (1) As used in this act:

21 (2) "Advertisement" includes the attempt by publication,
22 dissemination, solicitation, or circulation, oral or written, to
23 induce directly or indirectly any person to enter into any
24 obligation or to acquire any title or interest in any property.

25 (3) "Property" means any real or personal property, or both
26 real and personal property, intangible property, or services.

27 (4) "Person" means any natural person or his legal repre-
28 sentative, partnership, corporation, company, trust, business
29

1 entity, or association, and any agent, employee, salesman,
2 partner, officer, director, member, stockholder, associate,
3 trustee, or cestui que trust thereof.
4 (5) "Sale" means any sale, offer for sale, or attempt to
5 sell any property for any consideration.
6 SECTION 3. Consumer fraud division created. There is
7 hereby created the consumer fraud division under the department
8 of law, the head of which shall be the consumer counsel appointed
9 by the attorney general from among his staff. The attorney gen-
10 eral may appoint such assistants and, pursuant to section 13 of
11 article XII of the constitution, such clerical and professional
12 staff personnel as are necessary for the efficient operation of
13 the consumer fraud division. The consumer fraud division shall
14 administer and enforce the provisions of this act and shall trans-
15 mit annually to the attorney general for recommendation to the
16 general assembly its recommendations for such legislation as may
17 be necessary to protect consumers of this state from practices
18 declared by this act to be unlawful.
19 SECTION 4. Unlawful practice - exclusions. The act, use,
20 or employment by any person of any deceptive act or practice,
21 fraud, false pretense, false promise, or misrepresentation, or
22 the knowing concealment, suppression, or omission of any material
23 fact, with the intent that any other person shall rely thereon,
24 in connection with the sale or advertisement of any property,
25 whether or not any person has in fact been misled, deceived, or
26 damaged thereby, is hereby declared to be an unlawful practice;
27 provided, that this section shall not apply to the owner or
28 publisher of any newspaper, magazine, or publication of printed
29 matter wherein such advertisement appears, nor to the owner or

1 operator of any radio or television station which disseminates
2 such advertisement, when such owner, publisher, or operator has
3 no knowledge of the intent, design, or purpose of the advertiser.
4 SECTION 5. Powers of attorney general. (1) (a) When it
5 appears to the attorney general that any person has engaged in,
6 is engaging in, or is about to engage in, any practice declared
7 unlawful by section 4 of this act, or when he believes it to be
8 in the public interest that an investigation should be made to
9 ascertain whether any person in fact has engaged in, is engaging
10 in, or is about to engage in, any such practice, he may:
11 (b) Require such person to file a statement or report in
12 writing under oath or otherwise, on such forms as shall be pre-
13 scribed by him, as to all facts and circumstances concerning the
14 sale or advertisement of property by such person, and such other
15 data and information as he may deem necessary;
16 (c) Examine under oath any person in connection with the
17 sale or advertisement of any property;
18 (d) Examine any property or sample thereof, record, book,
19 document, account, or paper as he may deem necessary; and
20 (e) Pursuant to an order of any district court, impound
21 any record, book, document, account, paper, or sample of property
22 which is material to such practice and retain the same in his
23 possession until the completion of all proceedings undertaken
24 under this act.
25 SECTION 6. Subpoenas - hearings - rules. (1) The attorney
26 general, in addition to other powers conferred upon him by this
27 act, may issue subpoenas to require the attendance of witnesses
28 or the production of documents, administer oaths, conduct hearings
29

1 in aid of any investigation or inquiry, and prescribe such forms
2 and promulgate such rules as may be necessary to administer the
3 provisions of this act.

4 (2) Service of any notice or subpoena may be made in the
5 manner prescribed by law or the Colorado rules of civil procedure.

6 SECTION 7. Failure to obey order or subpoena - remedies.
7 (1) (a) If any person fails or refuses to obey any order of the
8 attorney general, to file any statement or report, or to obey
9 any subpoena issued by the attorney general, pursuant to the
10 provisions of this act, the attorney general, after at least five
11 days' notice, may apply to any district court in this state for
12 relief until such person obeys such order or subpoena or files
13 such statement or report. The court, in its order, may:

14 (b) Grant injunctive relief restraining the sale or adver-
15 tisement of any property by such person;

16 (c) Require the attendance of or the production of documents
17 by such person, or both;

18 (d) Dissolve a corporation organized under the laws of this
19 state or revoke the certificate of authority of a foreign corpo-
20 ration to transact business in this state, or suspend or revoke
21 any other license, permit, or certificate issued pursuant to law
22 to any such person, which may be used to further the alleged
23 unlawful practice; or

24 (e) Grant such other or further relief as may be necessary
25 to obtain compliance by such person.

26 SECTION 8. Restraining orders - injunctions - assurances
27 of discontinuance. (1) Whenever it appears to the attorney
28 general that a person has engaged in, is engaging in, or is about
29

1 to engage in, any practice declared to be unlawful by this act,
2 he may apply for and obtain, in an action in any district court
3 of this state, a temporary restraining order, or injunction, or
4 both, pursuant to the Colorado rules of civil procedure, pro-
5 hibiting such person from continuing such practices, or engaging
6 therein, or doing any act in furtherance thereof. The court may
7 make such orders or judgments as may be necessary to prevent the
8 use or employment by such person of any unlawful practice, or
9 which may be necessary to restore to any other person any moneys,
10 or real or personal property which may have been acquired by
11 means of any practice declared to be unlawful by this act.
12 (2) Where the attorney general has authority to institute a
13 civil action or other proceeding pursuant to the provisions of
14 this act, in lieu thereof, he may accept an assurance of discon-
15 tinuance of any act or practice declared to be unlawful by this
16 act. Such assurance may include a stipulation for the voluntary
17 payment by the alleged violator of the costs of investigation by
18 the attorney general, and any amount or amounts necessary to re-
19 store to any person any money or real or personal property which
20 may have been acquired by such alleged violator by means of any
21 such act or practice. Evidence of a violation of such assurance
22 shall constitute prima facie evidence of an act or practice
23 declared to be unlawful by this act in any civil action or pro-
24 ceeding thereafter commenced by the attorney general.
25 SECTION 9. Claims not barred. The provisions of this act
26 shall not bar any claim against any person who has acquired any
27 moneys or real or personal property by means of any practice
28 declared to be unlawful by this act.
29

SECTION 10. 3-9-2 (1), Colorado Revised Statutes 1963, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

3-9-2. Offices and divisions. (1) (f) The consumer fraud division, the head of which shall be the consumer counsel appointed by the attorney general from among his staff. The consumer fraud division and the consumer counsel shall have such powers and such authority as shall be provided by law.

SECTION 11. Effective date. This act shall take effect on July 1, 1967.

SECTION 12. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

## BILL B

1 A BILL FOR AN ACT

2 CONCERNING FRAUD IN EFFECTING SALES, AND RELATING TO FALSE

3 ADVERTISING.

4 Be It Enacted by the General Assembly of the State of Colorado:

5 SECTION 1. 40-15-1, Colorado Revised Statutes 1963, is

6 hereby amended to read:

7 40-15-1. Misrepresentation to effect sale - penalty. (1)

8 Any person, firm, corporation, or association, OR AGENT OR EM-

9 PLOYEE THEREOF, who, with intent to sell, PURCHASE, or in any

10 wise dispose of, OR TO CONTRACT WITH REFERENCE TO merchandise,

11 ~~securities~~ REAL ESTATE, service, EMPLOYMENT, or anything offered

12 by such person, firm, corporation, or association, OR AGENT OR

13 EMPLOYEE THEREOF, directly or indirectly, to the public for sale,

14 PURCHASE, ~~or~~ distribution, OR THE HIRE OF PERSONAL SERVICES, or

15 with intent to increase the consumption ~~thereof~~ OF OR TO CONTRACT

16 WITH REFERENCE TO ANY MERCHANDISE, REAL ESTATE, SECURITIES, SER-

17 VICE, OR EMPLOYMENT, or to induce the public in any manner to

18 enter into any obligation relating thereto, or to acquire title

19 thereto, or an interest therein, OR TO MAKE ANY LOAN, makes,

20 publishes, disseminates, circulates, or places before the public,

21 or causes, directly or indirectly, to be made, published, dis-

22 seminated, circulated, or placed before the public, in this

23 state, in a newspaper, MAGAZINE, or other publication, or in the

24 form of a book, notice, ~~handbill, poster, bill,~~ circular, pamph-

25 let, ~~or~~ letter, HANDBILL, POSTER, BILL, SIGN, PLACARD, CARD,

26 LABEL, OR OVER ANY RADIO OR TELEVISION STATION, OR OTHER MEDIUM

27 OF WIRELESS COMMUNICATION, or in any other way SIMILAR OR DISSI-

28 MILAR TO THE FOREGOING, an advertisement, ANNOUNCEMENT, OR STATE-

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1 MENT of any sort regarding merchandise, securities, service,
2 EMPLOYMENT, or anything so offered FOR USE, PURCHASE, OR SALE,
3 OR THE INTEREST, TERMS, CONDITIONS UPON WHICH SUCH LOAN WILL BE
4 MADE to the public, which advertisement contains any assertion,
5 representation, or statement OF FACT which is untrue, deceptive,
6 or misleading, OR IS PART OF A PLAN OR SCHEME WITH THE INTENT,
7 DESIGN, OR PURPOSE NOT TO SELL THE MERCHANDISE, COMMODITIES, OR
8 SERVICE SO ADVERTISED AT THE PRICE STATED THEREIN, OR OTHERWISE
9 COMMUNICATED, OR WITH INTENT NOT TO SELL THE MERCHANDISE, COM-
10 MODITIES, OR SERVICE SO ADVERTISED, shall be guilty of a misde-
11 meanor.
12 (2) UNTRUE, DECEPTIVE, OR MISLEADING ADVERTISING, WITHIN
13 THE MEANING OF THIS SECTION INCLUDES, BUT IS NOT LIMITED TO, THAT
14 WHICH USES, WITH OR WITHOUT THE USE OF THE WORD "VALUE" OR THE
15 WORD "WORTH" OR OTHER SYNONYMOUS TERMS, ANY WORD OR WORDS, FIGURE
16 OR FIGURES, WHICH FALSELY AND FRAUDULENTLY CONVEY TO ANOTHER THE
17 MEANING THAT THE MERCHANDISE, SECURITIES, SERVICE, OR OTHER
18 THINGS SO ADVERTISED ARE OF A GREATER VALUE OR WORTH THAN THEIR
19 ACTUAL VALUE OR WORTH.
20 SECTION 2. 40-15-3, Colorado Revised Statutes 1963, is
21 hereby amended to read:
22 40-15-3. <u>Exemptions</u>. Nothing in sections 40-15-1 to 40-15-4
23 shall be construed to apply to any proprietor or publisher of any
24 newspaper or periodical, BROADCASTER, PRINTER, OR OTHER PERSON
25 ENGAGED IN THE DISSEMINATION OF INFORMATION OR REPRODUCTION OF
26 PRINTED OR PICTORIAL MATTER who publishes, BROADCASTS, REPRODUCES,
27 or circulates any such advertisement without knowledge of the
28 untruthful nature of such advertisement.
29

1 SECTION 3. Safety clause. The general assembly hereby
2 finds, determines, and declares that this act is necessary for
3 the immediate preservation of the public peace, health, and
4 safety.
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1 A BILL FOR AN ACT
2 RELATING TO REAL ESTATE AND PROVIDING FOR THE REGISTRATION AND
3 CONTROL OF SUBDIVISIONS.
4 Be It Enacted by the General Assembly of the State of Colorado:
5 SECTION 1. Chapter 117, Colorado Revised Statutes 1963, is
6 hereby amended BY THE ADDITION OF A NEW ARTICLE 3 to read:
7 117-3-1. Definitions. (1) (a) As used in this article:
8 (b) The terms "subdivision" or "subdivided lands" mean
9 improved or unimproved land or lands divided or proposed to be
10 divided for the purpose of sale or lease into five or more lots
11 or parcels of land, which are contiguous or which were formerly
12 part of a common tract or which are part of a common development;
13 provided, that land or lands sold by lots or parcels of not less
14 than forty acres shall not be deemed to be a "subdivision" or
15 "subdivided lands" within the meaning of this article.
16 (c) The term "subdivider" means any person, firm, partner-
17 ship, joint venture, association, or corporation participating as
18 owner, promoter, developer, or sales agent in the planning, plat-
19 ting, development, promotion, sale or lease of a subdivision.
20 (d) The term "blanket encumbrance" means a deed of trust,
21 trust deed, or mortgage or any other lien or encumbrance, mechan-
22 ics' lien or otherwise, securing or evidencing the payment of
23 money and affecting land to be subdivided, or affecting more than
24 one lot or parcel of subdivided lands, or an agreement affecting
25 more than one such lot or parcel by which the owner or subdivider
26 holds said subdivision under an option, contract to sell or
27 trust agreement; except, that taxes and assessments levied by
28 public authority shall not be considered blanket encumbrances.
29

1 (e) The term "commission" means the real estate commission
2 created by section 117-1-3, C.R.S. 1963.
3 117-3-2. Registration of subdivision required. (1) It shall
4 be unlawful to sell or offer to sell, to lease or offer to lease,
5 or to negotiate the sale or lease of any lot or parcel of subdi-
6 vided lands located within or without this state until the subdi-
7 vider has applied to the commission for registration of the
8 subdivision and the commission has prepared a report thereon and
9 registered the subdivision.
10 (2) The commission shall have power to promulgate rules and
11 regulations consistent with this article to effectuate the pur-
12 poses thereof.
13 (3) A subdivider's registration under this article shall in
14 no way waive any requirements, ordinances, or resolutions of any
15 county, city and county, city, or town relative to subdivisions,
16 planning, zoning, or any other regulatory powers.
17 (4) The commission shall notify the proper county, city and
18 county, city, or town authorities of the registration or the
19 denial, suspension, or revocation of the registration of any sub-
20 division.
21 117-3-3. Application for registration. (1) Application for
22 registration shall be made on such forms as shall be provided by
23 the commission and shall be duly verified by oath of the appli-
24 cant, or if the applicant is not a natural person, by a partner
25 or officer of the applicant.
26 (2) (a) The application shall include the following infor-
27 mation:
28 (b) The name of the applicant and identification of the
29

1 applicant as a person, firm, partnership, association, or corporation;

(c) The principal office of the applicant wherever situated, and the location of the principal office and of any branch offices, and if a corporation, the state in which incorporated;

(d) The name and style of doing business, and the name of the subdivision, if any;

(e) The name, residence address, and business address of each person interested in the subdivision or in the business of the subdivider as principal, partner, officer, or director, specifying which capacity and any title, and of each person who owns or controls twenty per cent or more of the outstanding shares of stock of any corporate applicant;

(f) Accompanying documents evidencing the title or other interest of the applicant in the subdivision;

(g) Where legal title to the subdivision, evidenced by a general warranty deed, does not presently vest in the applicant, a copy of any documents which create in the applicant a title interest in the subdivision;

(h) A written statement or opinion of any attorney at law, licensed to practice law in the state in which the subdivision is located, and subscribed by him, which states the attorney's opinion of the status of title in said subdivision; or, in lieu thereof, a copy of any title insurance commitment issued by a title insurance company authorized to transact title insurance business in the state in which the subdivision is located, upon which commitment one or more title insurance policies will or may be issued upon the lots or parcels to be sold in said subdivision;

(i) A statement attesting that the subdivision has been surveyed by a registered or licensed land surveyor and that a plat of the subdivision has been filed with the county clerk and recorder of the county in which the subdivision or any part thereof is located, which statement shall be accompanied by a copy of such plat;

(j) A statement attesting that the applicant has complied with all state, county, or municipal requirements for subdivided lands and the sale thereof prior to offering such lands for sale or lease;

(k) Sample copies of contracts of sale, receipt and option contracts, deeds, and other legal documents to be used to effectuate the sale or transfer of title interest in said subdivided lands, together with a statement of the applicant's agreement to include in each such document signed by or delivered to a purchaser, a clear recital of the legal description of the property involved and of the encumbrances outstanding at the date of the document;

(l) A statement of any warranties proposed to be made to advertise the sale of said lots;

(m) A true statement of the provisions for legal access, sewage disposal, and public utilities, including water, electricity, gas, and telephone facilities, in the proposed subdivision.

(n) The commission may require additional necessary information by submitting a questionnaire to the subdivider.

117-3-4. Investigation of applicant and subdivision. (1) The commission may acquire and procure such evidence it deems necessary concerning the truthfulness, honesty, and past finan-

cial record of any applicant for registration of a subdivision, or, if the applicant is other than a natural person, of any person, director, officer, member, or stockholder where such stockholder has or exercises, directly or indirectly, a controlling interest in such applicant.

(2) The commission may investigate and examine any subdivision or proposed subdivision for which application for registration has been made.

117-3-5. Report of commission. (1) Upon an examination of the subdivision or proposed subdivision, the commission shall, pursuant to section 117-3-11, prepare a report thereon and issue at least one copy thereof to the applicant. Said report shall be a public record and a copy thereof shall be issued to any person requesting the same upon the payment to the commission of a fee of fifty cents for each page.

(2) (a) The issuance of any such report shall not be deemed to be a finding that the information contained in or accompanying any application for registration of a subdivision, or any amendment thereto, is true and accurate or that it does not contain an untrue statement of fact or omit to state a material fact, or be held to mean that the commission has in any way passed upon the merits of, or given approval to, such subdivision or subdivider.

(b) It shall be unlawful for any person in advertising, offering, selling, or leasing any subdivision or subdivided lands, or any lot or parcel in a subdivision to make or cause to be made any representation or implication in any manner whatsoever contrary to the provisions of paragraph (a) of this subsection (2).

117-3-6. Disclosure to purchaser. (1) It shall be unlawful

1 for any subdivider to sell or lease any lot or parcel of land in
2 any subdivision unless the lease or contract of sale and the in-
3 strument of conveyance shall disclose and identify any deed of
4 trust, trust deed, or mortgage, or other creditor's lien affect-
5 ing the lot or parcel sold or leased.
6 (2) It shall be unlawful for any subdivider to sell or
7 lease any lot or parcel of land in any subdivision unless the
8 lease or contract of sale and the instrument of conveyance shall
9 disclose the existence of special assessments or bonded indebted-
10 ness levied by any political subdivision or public authority which
11 affects such lot or parcel sold or leased.
12 117-3-7. Release clause. It shall be unlawful for any sub-
13 divider to sell or lease any lot or parcel of land in any subdivi-
14 sion which is subject to a blanket encumbrance unless there
15 exists in such blanket encumbrance or other supplementary agree-
16 ment a provision, hereinafter referred to as a release clause,
17 which by its terms shall unconditionally provide that the purchaser
18 or lessee of such a lot or parcel can obtain legal title or other
19 interest contracted for, free and clear of such blanket encum-
20 brance, upon compliance with the terms and conditions of the pur-
21 chase or lease.
22 117-3-8. Escrow, trust, or bond requirements. (1) (a) It
23 shall be unlawful to sell or lease any lot or parcel of subdivided
24 land unless one of the following conditions is complied with:
25 (b) All sums of money paid or advanced by any purchaser or
26 lessee shall not be commingled with funds of the seller or lessor
27 but shall be deposited in a separate account, identified as a
28 trustee or escrow account, with a commercial bank chartered by a
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1 state or the federal government, on a demand deposit basis, un-
2 less the money is deposited under a written trust or escrow agree-
3 ment with such a bank having trust powers and which is under the
4 supervision of a state banking commission or commissioner, or the
5 United States comptroller of the currency, until the title or
6 other interest contracted for, whether title of record, equitable
7 title, or other interest, is delivered to the purchaser or les-
8 see, and, in the case of a sale, until the proper release is
9 obtained from any existing encumbrance; or
10 (c) The title to the subdivision is held in escrow or trust
11 under an agreement of escrow or trust, acceptable to the commis-
12 sion, until a proper release from any existing encumbrance is
13 obtained and title or other interest contracted for is delivered
14 to such purchaser or lessee; or
15 (d) A bond payable to the state of Colorado for the benefit
16 and protection of purchasers or lessees of such lots or parcels,
17 conditioned upon the return of any money paid or advanced by any
18 such purchaser or lessee for or on account of the purchase or
19 lease of any such lot or parcel in the event the subdivider shall
20 not, within the time specified in his contract to sell or lease,
21 or any extension thereof, deliver the title or other interest
22 contracted for, whether the title of record, equitable title, or
23 other interest, to such purchaser or lessee for any reason other
24 than the incurred default of such purchaser or lessee. The bond
25 shall be in an amount, determined by the commission, sufficient
26 to provide ample protection for all such purchasers or lessees,
27 or both, but in no event more than one hundred thousand dollars.
28 (2) Records relative to escrow deposits, bonds, or escrow
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1 or trust agreements shall be maintained by the subdivider for
2 future use or inspection by an authorized representative of the
3 commission. Such records shall contain such information as may be
4 required by this article and as prescribed by rules and regula-
5 tions of the commission.

6 117-3-9. Fees - expenses of investigation. (1) Every appli-
7 cant shall submit with his application registration fee of
8 seventy-five dollars plus one dollar for each lot or parcel in ex-
9 cess of fifty lots or parcels for each subdivision. Said fee
10 shall not be refundable.

11 (2) If the applicant proposes to sell or lease in this state
12 lots or parcels in any subdivision located outside this state, the
13 commission may require an investigation and inspection of any
14 such subdivision. When an investigation or inspection of a subdi-
15 vision or the records of a subdivider shall be required by the
16 commission, there shall be submitted in addition to the registra-
17 tion fee an amount equivalent to fifteen cents per mile for each
18 mile going and returning, plus an amount not to exceed twenty-five
19 dollars per day for each day consumed in the investigation and
20 inspection of such subdivision or records. The commission shall
21 estimate the mileage from the office of the commission to the
22 subdivision, or the place where such records are maintained, and
23 the return mileage therefrom, and the time necessary to complete
24 the investigation and inspection, and shall notify the applicant
25 of such amount.

26 (c) All registrations of subdivisions made under the provi-
27 sions of this article shall expire twelve months after the date
28 on which the report of the commission on such subdivision is
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1 issued. Each registration of a subdivision may be renewed upon
2 the payment of a fee of twenty-five dollars and the filing of an
3 application for renewal of registration not later than the expi-
4 ration date of the prior registration.
5 (d) Any application for amendment to the report of the com-
6 mission on any subdivision shall be accompanied by the payment of
7 a fee of twenty-five dollars.
8 (e) All moneys received pursuant to this article shall be
9 deposited in the state treasury to the credit of the real estate
10 license fund, created pursuant to section 117-1-9, C.R.S. 1963.
11 117-3-10. Consent to service of process. Every nonresident
12 applicant, including corporations not chartered under the laws of
13 this state, shall file with the secretary of state an irrevocable
14 consent to the service of process upon such applicant in any
15 action in any court of this state by the service thereof upon the
16 secretary of state and by mailing of a copy thereof by certified
17 mail, return receipt requested, to the applicant at the business
18 or residence address contained in the application form.
19 117-3-11. Registration - issuance of report of commission.
20 (1) (a) The commission shall prepare a proper report on each ap-
21 plication for subdivision registration, except where, upon exami-
22 nation and investigation, the commission shall find:
23 (b) The applicant cannot convey good and merchantable title
24 according to the representations and warranties proposed to be
25 made or as provided by the contracts of sale, deeds, or other
26 documents proposed to be used in the sale or transfer of title or
27 other interest in any subdivision lot or parcel proposed to be
28 sold or leased; or
29

1 (c) The applicant or, where the applicant is not a natural
2 person, any partner, director, officer, member, or stockholder,
3 where such stockholder has or exercises, directly or indirectly,
4 a controlling interest in such applicant, does not have a good
5 reputation for truthfulness, honesty, and financial responsibility,
6 or where the applicant is insolvent; or

7 (d) The applicant proposes to make representations which do
8 not fairly state the character of the transactions or the nature
9 and quality of the lots or parcels in the subdivision, or which
10 are likely to mislead prospective purchasers or lessees concerning
11 any material factor in the transaction; or

12 (e) The applicant conceals or omits to disclose any material
13 fact, the disclosure of which might substantially affect the de-
14 cisions of prospective purchasers or lessees; or

15 (f) The applicant engages or proposes in any way to engage
16 in advertising which is false or misleading; or

17 (g) The applicant proposes to engage in any acts or practi-
18 ces which are in violation of the laws of this state or the rules
19 and regulations of the commission.

20 117-3-12. Amendment to registration. (1) After the issu-
21 ance of the report of the commission, it shall be unlawful for
22 any subdivider to change the name of the subdivision, or the plan
23 of offering, or any of the requirements enumerated in section
24 117-3-3, without first notifying the commission in writing of the
25 intended change or changes. Within ten days after receiving the
26 notice of change, the commission shall either approve the change
27 or require the subdivider to comply with the procedure required
28 for an original application, and shall notify the subdivider of
29 its action.

1 (2) It shall be the duty of the applicant to file promptly
2 with the commission an amendment to the application for registra-
3 tion, verified under oath as in the case of the original applica-
4 tion, setting forth any change of ownership resulting in any
5 person's owning or controlling twenty per cent or more of the
6 financial interest in the subdivision or in the subdivider, if a
7 corporation, occurring after the filing of the previous applica-
8 tion. Such amendment shall be filed within ten days after such
9 change of ownership.
10 (3) The securing of a construction loan or improvement loan
11 and the execution of a deed of trust, trust deed, or mortgage
12 affecting a registered subdivision as security therefor shall not
13 be considered a change of ownership nor a change of material fact
14 or representation under this section unless the proceeds of such
15 loan or loans are not to be used for the construction of improve-
16 ments on the lots or parcels in said subdivision.
17 117-3-13. Investigation - suspension or revocation of
18 registration. (1) The commission may investigate any subdivision
19 in which lots or parcels are offered for sale or lease in this
20 state. It shall be the duty of the commission to suspend or re-
21 voke the registration of any subdivision if the commission finds
22 from investigation that the subdivider has failed to comply with
23 the provisions of this article or has failed to conduct the sale
24 or leasing of lots or parcels in said subdivision according to
25 the plan of offering specified in the application for registration,
26 or amendments thereto, or where a change of facts occurring after
27 the registration creates grounds upon which the original registra-
28 tion would have been denied.
29

1 (2) Whenever the commission shall find that any subdivider
2 or any other person is violating or is about to violate any of
3 the provisions of this article or any rule or regulation of the
4 commission, or that the further sale or leasing of lots or parcels
5 in a subdivision would constitute grounds for denial, suspension,
6 or revocation of the registration thereof, the commission may
7 order the subdivider or other person to desist and refrain from
8 the violation of any provision of this article or the rules and
9 regulations of the commission, or from the further sale or leasing
10 of lots or parcels in said subdivision.
11 (3) After such an order is issued, the subdivider or person
12 named therein, within thirty days after receipt of the order, may
13 file a written request for a hearing. The commission shall hold
14 a hearing within thirty days thereafter, unless the person re-
15 questing the hearing shall request a postponement until a later
16 date. If the hearing is not held within said thirty days or on or
17 before such later date, or if the decision of the commission is
18 not rendered within thirty days after such hearing, the order
19 shall be rescinded.
20 117-3-14. Hearings - hearing officer. (1) When an applica-
21 tion for registration, or an amendment thereto, or an application
22 for the renewal of registration has been denied, the applicant
23 shall be notified in writing of such denial by mailing such notice
24 to the applicant at the business address contained in the applica-
25 tion, by certified mail, return receipt requested. Within thirty
26 days after the notice has been mailed, the applicant may petition
27 the commission to set a date and a place for the hearing, afford-
28 ing the applicant an opportunity to be heard in person or by
29 counsel.

1 (2) Before suspending or revoking any registration, the com-
2 mission shall give written notice to the applicant or subdivider
3 of the charges against him and shall afford him an opportunity to
4 be heard in person or by counsel. Such notice may be served by
5 delivering it personally to the applicant or subdivider at least
6 ten days before the date set for hearing, or by mailing such
7 notice by registered mail, return receipt requested, at least fif-
8 teen days before the date set for hearing, to the business address
9 of the applicant or subdivider shown on the application for regis-
10 tration.
11 (3) A hearing officer, appointed pursuant to section 117-1-
12 13, C.R.S. 1963, shall conduct all hearings for the denial, sus-
13 pension, or revocation of any subdivision registration in the man-
14 ner prescribed by law.
15 (4) Upon the request of any party before any hearing has
16 commenced, either the commission or the hearing officer shall
17 issue subpoenas and subpoenas duces tecum pursuant to law. After
18 a hearing has commenced, only the hearing officer conducting the
19 hearing may issue any subpoena or subpoena duces tecum.
20 (5) Upon the verified petition of any party, the commission
21 may order that the testimony of any material witness residing
22 within or without this state be taken by deposition in the manner
23 prescribed by the Colorado rules of civil procedure, insofar as
24 practicable.
25 (6) The testimony and proceedings at any hearing shall be
26 recorded and transcribed by a certified court reporter and filed
27 in the records of the commission. The hearing officer shall con-
28 duct any hearing as presiding officer and shall make his findings
29

1 of facts and recommendations, and shall deliver the same and a
2 complete record of all proceedings so conducted to the commission
3 within twenty days after any hearing. No registration shall be
4 denied, suspended, or revoked until the commission shall have
5 made its decision and issued its order based on such findings,
6 recommendations, and record, which order shall be issued within
7 thirty days after delivery by the hearing officer of his findings
8 and recommendations.

9 117-3-15. Judicial review. (1) The decision and order of
10 the commission in denying, suspending, or revoking any registra-
11 tion under this article shall be subject to judicial review as
12 prescribed in this section. No action for judicial review of any
13 such order of the commission shall automatically constitute or
14 operate as a supersedeas or stay of execution of such order.

15 (2) Any party aggrieved by the order of the commission may
16 seek judicial review of the same by filing a petition therefor in
17 the district court in the city and county of Denver within twenty
18 days after the issuance of such order. A copy of such complaint
19 shall be served upon the commission within five days thereafter,
20 and the commission shall file with the court, within ten days
21 after such service, the complete record of all proceedings and
22 orders of the commission concerning such order appealed from.

23 (3) In any such action, the court shall have the right, in
24 its discretion, to stay the execution or effect of any final
25 order of the commission. In the event the court shall grant any
26 stay of execution, the court, in its discretion, may require the
27 petitioner to execute and file with the court a bond in such sum
28 as the court may prescribe, with sufficient surety approved by
29

1 the court, which bond shall be conditioned upon the compliance
2 with the requirements of this article during the pendency of such
3 action, and upon the prompt payment of all damages arising from
4 or caused by the delay in the taking effect of or in the enforce-
5 ment of the order complained of, and for all costs which may be
6 assessed or required to be paid in connection with such proceed-
7 ings.

8 (4) The court shall limit its review of the order of the
9 commission to the certified transcript of the proceedings before
10 the hearing officer and the findings of facts and recommendations
11 of such hearing officer, unless the court shall find that the com-
12 mission has exceeded its jurisdiction or authority or abused its
13 discretion, or that the party aggrieved by the order of the com-
14 mission has been denied due process of law, or that a preponderance
15 of the evidence was contrary to the findings and recommendations
16 of the hearing officer or the order of the commission, or both.

17 117-3-16. Violation - penalties - injunctions. (1) Any
18 person who signs any written application or statement required by
19 this article, and who willfully and falsely makes an oath to or
20 affirms the same before any officer or other person having the
21 power to administer oaths, is guilty of perjury and shall be
22 punished pursuant to section 40-7-1, C.R.S. 1963.

23 (2) Every officer, agent, or employee of any firm, partner-
24 ship, joint venture, association, or corporation, and every
25 other person who willfully violates section 117-3-2 or 117-3-6 is
26 guilty of a felony and upon conviction thereof, shall be punished
27 by a fine of not less than one thousand dollars nor more than
28 five thousand dollars, or by imprisonment in the state peniten-
29

1 tiary for not more than five years, or by both such fine and im-
2 prisonment.
3 (3) Every subdivider, or agent or employee thereof, who
4 willfully violates section 117-3-5 (2), 117-3-7, 117-3-8, or
5 117-3-12 is guilty of a misdemeanor and upon conviction thereof,
6 shall be punished by a fine of not less than one hundred dollars
7 nor more than five hundred dollars.
8 (4) Every officer, agent, or employee of any firm, partner-
9 ship, joint venture, association, or corporation, and every other
10 person who knowingly authorizes or directs the publication, adver-
11 tisement, distribution, or circulation of any false or misleading
12 statement or representation concerning subdivisions or lots or
13 tracts therein offered for sale or lease is guilty of a felony,
14 and upon conviction thereof shall be punished by a fine of not
15 less than one thousand dollars, or by imprisonment in the state
16 penitentiary for not more than five years, or by both such fine
17 and imprisonment.
18 (5) If any person, firm, partnership, joint venture, associ-
19 ation, or corporation violates or attempts to violate any provi-
20 sion of this article, the same may be restrained by a temporary
21 restraining order or injunction in an original action brought in
22 the district court of the judicial district in which the violation
23 or attempted violation shall occur, or of the judicial district
24 in which the subdivision is located, or, in the case of a subdivi-
25 sion located outside this state, in the district court of the
26 city and county of Denver. Such action may be instituted by the
27 commission through the attorney general or the district attorney
28 of such district.
29

SECTION 2. Repeal. Article 16 of chapter 118, C.R.S. 1963, and the amendment thereto enacted by chapter 243, Session Laws of Colorado 1965, are hereby repealed.

SECTION 3. Effective date. This act shall take effect on July 1, 1967.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

TEXT | Bill D | COMMENTS

A BILL FOR AN ACT

CONCERNING RETAIL INSTALLMENT SALES AND THE EXTENSION OF CREDIT.

Be It Enacted by the General Assembly of the State of Colorado:

SECTION 1. Short title. This act shall be known and cited as the "Colorado Retail Installment Sales Act of 1967".

SECTION 2. Definitions. (1) When used in this act, unless the context clearly otherwise requires:

(2) "Person" means any individual, partnership, corporation, trust, association, or any other legal entity.

*Comment:* Largely same as 13-16-1 (2), C.R.S. 1963.

(3) "Goods" means all personal property except motor vehicles as defined in subsection (4) of this section. The term does not include money or things in action, but does include personal property which, at the time of sale or subsequently, is so affixed to realty as to become a part thereof, whether or not severable therefrom.

*Comment:* Largely same as 121-2-2 (1), C.R.S. 1963.

(4) "Motor vehicle" means any device propelled by a motor in which, upon which, or by which, any person or property is or may be transported or drawn upon a public highway,

*Comment:* Same as 13-16-1 (4), C.R.S. 1963.

| TEXT | COMMENTS |
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| excepting tractors, power shovels, road machinery, agricultural machinery, and other machinery not designed primarily for highway transportation, but which may incidentally transport a person or property on a public highway and excepting such devices which move upon or are guided by a track or travel through air, and includes trailers and semitrailers designed to be drawn by motor vehicles. | |
| (5) "Buyer" or "retail buyer" means a person who buys goods from a seller or a retail seller under a retail installment contract and not for the purpose of resale, or a person who buys, hires, or leases a motor vehicle under any retail installment contract, or any legal successor in interest to such person, and said term shall continue to apply to such person notwithstanding the fact he may have entered into one or more extensions, deferments, renewals, or other revisions of the original contract. | Based on combining 121-2-2 (2) and 13-16-1 (6), C.R.S. 1963. |
| (6) "Seller" or "retail seller" means a person engaged in the business of selling goods to a buyer or a retail buyer under a retail installment contract or a person engaged in the | Based on combining 121-2-2 (3) and 13-16-1 (5), C.R.S. 1963. |

**TEXT**

business of selling, hiring, or leasing motor vehicles under a retail installment contract.

(7) "Retail installment contract" means an agreement evidencing a retail installment sale entered into in this state pursuant to which a buyer promises to pay in one or more deferred installments the time sales price of goods or a motor vehicle and pursuant to which the title to or a lien upon the goods or motor vehicles is retained or taken by the seller as a security interest for payment of the retail installment contract.

(8) "Security interest" means any property right or title in a motor vehicle or goods, which are the subject of a retail installment contract or revolving credit agreement, taken or retained to secure performance of any obligation of the buyer under the contract or agreement, and any renewal or extension thereof, notwithstanding shipment or delivery to the buyer.

(9) "Cash sale price" or "cash price" means the price stated in a retail installment contract for which the seller would have sold to the buyer and the buyer would have bought

**COMMENTS**

Based on 121-2-2 (4) C.R.S. 1963.

Subsection (8) is new language.

Based on combining 121-2-2 (5) and 13-16-1 (8), C.R.S. 1963. Provisions changed to itemize charges for servicing separately from cash

**TEXT**

from the seller a motor vehicle or goods which are the subject matter of the retail installment contract, if such sale had been a sale for cash instead of a time sale. The cash price may include any taxes and costs for accessories.

(10) "Official fees" means the amount of fees and charges prescribed by law for filing, recording, or otherwise perfecting or releasing or satisfying a security interest in a motor vehicle or goods, or a lien on real estate as permitted by this act, in connection with a retail installment contract, which have been or will actually be paid to public officials.

(11) "Base time price" means the cash sale price of the motor vehicle or goods which are the subject matter of the contract plus the amount, if any, included in the contract for insurance, servicing charges, and official fees, minus the buyer's down payment.

(12) "Down payment" includes all amounts paid in cash, credits, or the agreed value of goods, by or for the buyer to or for the benefit of the seller at or before the time of the execution of the retail installment contract.

**COMMENTS**

sale price.

Bases on 121-2-2 (6), C.R.S. 1963.

Based on 121-2-2 (7), C.R.S. 1963.

Subsection (12) is a new definition.

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| (13) "Time price differential" means the amount, as limited by the provisions of section 9 of this act, that is agreed upon by the buyer and seller to be added to the base time price, to be paid by the buyer for the privilege of purchasing the motor vehicle or goods upon a time payment basis instead of for cash. The term shall not include the premium upon any insurance contracted for in the retail installment contract. | Based on combining 121-2-2 (8) and 13-16-1 (9), C.R.S. 1963. Statement to the effect that time price differential shall not in anywise be considered as interest as defined by the laws of this state has been removed. |
| (14) "Time sales price" means the total of the base time price of the goods or motor vehicle plus the time price differential. | Based on 121-2-2 (9), C.R.S. 1963, but revised to provide same meaning in fewer words. |
| (15) "Revolving credit agreement" means an agreement, other than a retail installment contract, entered into in this state pursuant to which the buyer may purchase goods or services at retail from time to time and under the terms of which a finance or service charge is to be computed in relation to the buyer's unpaid monthly balance. | Subsection (15) is new. |
| (16) "Sales finance company" means any person engaged as principal, or broker, in the business of acquiring the retail | Based on 13-16-1 (7), C.R.S. 1963 -- "or retail credit agreements" added. |

| TEXT | COMMENTS |
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| seller's interest in retail installment contracts or retail credit agreements, or lending money or credit on the security of the retail seller's interest in such contract or agreement, whether by discount, purchase, or pledge thereof, and includes a retail seller retaining as owner thereof retail installment contracts. The term does not include any person to the extent that he makes bulk purchases of retail installment contracts or retail credit agreements from persons other than a retail seller, or makes a bona fide loan to persons other than a retail seller, secured by a pledge of such contracts or agreements, by the terms of which purchase or pledge, in the absence of default in the loan, the collecting of payments upon the retail installment contracts or credit agreements is made by the seller or pledgor, as the case may be, but the term does not include a retail seller retaining retail installment contracts while in the process of transfer and sale of such contracts to a sales finance company unless such retention continues for a period in excess of fifteen days after the date of execution. | |

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| (17) "Commissioner" means the state bank commissioner. | Based on 13-16-1 (10), C.R.S. 1963 |
| (18) "Holder" means a person entitled to enforce a retail installment contract against a buyer. | Subsection (18) is new. |
| (19) "Servicing charges" means charges for the installation, delivery, servicing, or repair of the subject matter of a retail installment contract. | Subsection (19) is new. |
| SECTION 3. <u>Licensing of sales finance companies</u>. (1) No person shall engage in the business of sales finance company in this state without a license therefor as provided in this act, except that the following persons shall not be required to be licensed but shall otherwise be subject to the provisions of this act: State and national banks; trust companies formed under the provisions of article 16 of chapter 14, Colorado Revised Statutes 1963; industrial banks; and motor vehicle dealers licensed as such to sell new and used motor vehicles pursuant to statutes of the state of Colorado. | Largely same as 13-16-2, C.R.S. 1963 -- "goods" added, and following language pertaining to exemption from licensing has been removed from subsection (1): "Persons who acquire the retail seller's interest in a retail installment contract, whether by discount, purchase, or pledge thereof, where the amount of the time price differential contracted to be paid by the retail buyer to the retail seller in connection with the purchase of goods or a motor vehicle, as shown in said contract, does not exceed the rate of eighteen per cent per annum on the unpaid balance." |

TEXT | COMMENTS

(2) The application for a sales finance company license shall be in writing and in the form prescribed by the commissioner. The application shall contain the name of the applicant; date of incorporation, if incorporated; the address where the business is to be conducted; and similar information as to any branch office of the applicant; the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers, and such other pertinent information as the commissioner may require.

(3) Every sales finance company shall keep on file at all times with the commissioner the maximum rate charts in current use, which rate charts shall be numbered for identification.

(4) The license fee for each calendar year or part thereof shall be the sum of one hundred dollars for the principal place of business of the licensee and the sum of twenty-five dollars for each branch of the licensee maintained in this state. All license fees under this act shall be paid to the

TEXT

department of revenue.

(5) Each license shall specify the location of the office or branch and shall be conspicuously displayed at such location. In case such location is changed, the commissioner shall endorse the change of location on the license without charge.

(6) Upon the filing of an application and payment of said fee, and upon submitting satisfactory evidence to the commissioner that the applicant or, if a corporation, that the directors and officers, or any stockholder owning ten per cent or more of the stock thereof, has not been convicted of a crime during the prior ten years which involved fraud or violation of any trust, whether public or private, the commissioner shall issue a license to the applicant to engage in the business of a sales finance company under and in accordance with the provisions of this act for a period which shall expire the last day of December next following the date of its issuance. Such license shall not be transferable or assignable. No licensee shall transact any business provided for by this act

COMMENTS

Provisions relating to qualifications of applicant are new.

TEXT | COMMENTS

under any other name except that under which it has been licensed.

SECTION 4. Suspension or revocation of licenses. (1) (a) A license may be suspended or revoked by the commissioner on any of the following grounds:

Largely same as 13-16-3, C.R.S. 1963.

(b) Material misstatement in the application for license;

(c) Failure to comply with any provision of this act or any other law relating to retail installment contracts;

(d) Defrauding any retail buyer to the buyer's damage;

(e) Failure to perform any valid written agreement with any retail buyer;

(f) Fraudulent misrepresentation, circumvention, or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under any law of this state relating to retail installment contracts. To be a ground for suspension or revocation, the act complained of must be willful.

(2) If a licensee is a firm, association, or corporation,

**TEXT**

it shall be sufficient cause for the suspension or revocation of a license that any officer, director, or trustee thereof, or any member of a licensed partnership, has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his employees while acting as his agent, if such licensee had actual knowledge of said acts and, after such actual knowledge, retained the benefits, proceeds, profits, or advantages accruing from said acts, or otherwise ratified said act.

(3) No license shall be suspended or revoked except after hearing thereon. The commissioner shall give the licensee at least twenty days' written notice, in the form of an order to show cause why such license should not be suspended or revoked, of the time and place of such hearing by registered or certified mail, return receipt requested, and addressed to the principal place of business in this state of such licensee. The said notice shall contain the grounds of complaint against the licensee. Any order suspending or revoking such license

**COMMENTS**

Time for notice extended from at least 15 days to at least 20 days in Subsection (3).

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| shall recite the grounds upon which the same is based and shall not be effective until after ten days' written notice thereof forwarded by registered mail, or certified return receipt requested, to the licensee at such principal place of business. No revocation, suspension, or surrender of any license shall impair or affect the obligation of any lawful retail installment contract entered into or acquired previously thereto by the licensee. | |
| (4) Within thirty days after any such suspension or revocation of a license, the person aggrieved may apply for a review thereof by an application to the district court, in accordance with the practice of said court. The district court shall determine in a trial de novo, and in a summary manner, all questions, both of fact and of law, touching upon the legality and reasonableness of the determination of the commissioner, and shall render such judgment as shall be lawful and just. Writs of error may be prosecuted to the supreme court of Colorado from any such final judgment. | |
| SECTION 5. <u>Rescinding contract -- when</u>. Where a seller | Section 5 is new. |

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| or holder is exempt from licensing under the provisions of section 3 of this act, a buyer may rescind a retail installment contract and sue for damages when a seller or holder has defrauded said buyer to the buyer's damage or when there is, on the part of the seller or holder, fraudulent misrepresentation, circumvention, or concealment through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the buyer under any law of this state relating to retail installment contracts. | |
| SECTION 6. Filing of complaints. Any retail buyer or his designated agent having reason to believe that this act or any other law relating to retail installment contracts or credit agreements has been violated may file with the commissioner a written complaint setting forth the details of such alleged violation, and the commissioner, upon receipt of such complaint, may inspect the pertinent books, records, letters, and contracts of the licensee and of the retail seller involved relating to such specific written complaint. | Largely same as 13-16-4, C.R.S. 1963 -- reference to credit agreements added and "or his designated agent" also added in Section 6. |
| SECTION 7. Powers of commissioner. (1) The commissioner | Based on 13-16-5, C.R.S. |

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| shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before him in any matter over which he has jurisdiction, control, or supervision pertaining to this act. The commissioner shall have the power to administer oaths and affirmations to any person whose testimony is required. | 1963 -- unnecessary language omitted. |
| (2) If any person shall refuse to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge of the district court, upon application and proof of such refusal, may order the witness to appear before the commissioner and to give testimony or to produce evidence, or both, as required thereby. Failure to comply with sucn order shall constitute contempt of court and shall be punishable as such. | |
| SECTION 8. <u>Contracts - requirements - limitations - contents</u>. (1) (a) Every retail installment contract shall be in writing, shall contain all of the agreements of the parties, the date when signed, the names and addresses of both the seller and the buyer, a description of the goods or motor | Section 8 is generally based on combining 13-16-6, in part, and 121-2-3, C.R.S. 1963, as amended by chapter 86, Session Laws of 1964.<br><br>Reference to names and addresses of seller and buyer, and to security added in |

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| vehicle purchased, leased, or hired, a description of which of the goods or motor vehicle or real estate, if any, secures the buyer's obligation, and shall be signed by both the buyer and the seller. An executed copy thereof shall be furnished to the buyer and to every other signer who is or may become legally liable on such contract at the time of the execution of the contract, except that when a contract is signed by husband and wife, only one copy need be furnished. | Subsection (1) (a). Also, copy of contract furnished to buyer and others changed to an "executed" copy of such contract. |
| (b) No retail installment contract signed by a buyer is valid when it contains blank spaces to be filled in after execution except that, if delivery of the motor vehicle or goods is not made at the time of execution of the contract, the serial numbers or other identifying marks of the motor vehicle or goods and the due date of the first installment payment may be inserted in the contract after its execution. | Subsection (1) (b) changed to make invalid any contract signed by buyer when it contains blank spaces other than those authorized. |
| (c) When the retail installment contract is for the acquisition of consumer goods as defined in section 155-9-109, Colorado Revised Statutes 1963, as amended, except any airplane, any mobile home, or any item of personal property for which the cash sale price is three thousand dollars or more, | Subsection (1) (c) is new. |

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| the retaining or taking of title to, or a lien upon any real or personal property by the seller as security for payment of the retail installment contract other than the motor vehicle or goods purchased, is expressly forbidden except such contracts involving personal property which, at the time of sale or subsequently, is so affixed to realty as to become a part thereof, whether or not severable therefrom. | |
| (d) Unless notice has been given to the buyer of actual or intended assignment of a retail installment contract, payment thereunder or tender thereof made, or notice required or permitted by this act, by the buyer to the last known holder of such contract shall be binding upon such subsequent holder or assignee. | |
| (e) Upon written request from the retail buyer, but not more often than once every six months, the holder of the retail installment contract shall give or forward to the retail buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. When any payment is made on account of any retail installment contract, the person receiving such payment shall, upon request, or without | Last two sentences in Subsection (1) (e) are new. |

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| request if the payment is made in cash, give the buyer a complete written receipt therefor. If the buyer specifies that the payment is made on one of several obligations, the receipt shall so state. If the buyer requests information for income tax purposes concerning the amount of the time price differential paid in the previous calendar year, the holder shall provide it, or the information necessary to compute the same, without charge once in every calendar year. | |
| (2) (a) A retail installment contract shall contain the following items as such and in the following order: | |
| (b) The cash sale price of the goods or motor vehicle if the sale were made for cash; | |
| (c) The amount of the buyer's down payment, and whether made in money, credits, or goods, or a motor vehicle, or partly in money, and partly in credits, and partly in goods or a motor vehicle, including a description of any goods or motor vehicle traded in; | Reference to "credits" added in Subsection (2) (c). |
| (d) The unpaid balance of the cash sale price, which is the difference between items (b) and (c) of this subsection (2); | |
| (e) The amount of servicing charges; | Subsection (2) (e) is new. |

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| (f) The cost to the buyer of any insurance and any optional benefits, if any, included in the transaction, specifying the types of coverage and benefits; and if the contract for the purchase of a motor vehicle does not provide for automobile liability insurance, the following clause shall be in the contract in capital letters and bold-face type: "This contract does not provide for automobile liability insurance, and said buyer also states that *he has*, he has not (strike words not applicable) in effect an automobile liability policy as defined in section 13-7-3 (11), Colorado Revised Statutes 1963, on the motor vehicle sold by this contract"; | |
| (g) The amount of official fees; | |
| (h) The base time price; | |
| (i) The amount of the time price differential; | |
| (j) The number of installment payments required and the amount and date of each payment necessary finally to pay the time sales price; | Reference to "time balance" in present law has been removed. |
| (k) The time sales price, which is the sum of items (d), (e), (f), (g), and (i) of this subsection (2). | |
| (3) (a) A retail installment contract shall contain the | Subsection (3) is new. |

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following items in ten point bold-face type or larger directly above the space reserved in the contract for the signature of the buyer: "Notice To Buyer:

"(1) Do not sign this contract if any of the spaces intended for the agreed terms to the extent of then available information are left blank.

"(2) You are entitled to a copy of this contract at the time you sign it.

"(3) If you have purchased consumer goods, or bought, hired or leased a motor vehicle, you are entitled to bring against the seller thereof any claim or defense which you may have against him, or if the holder of the contract is not related or affiliated with the seller, any such claim or defense against the seller may be asserted against such holder only if you have notified such holder of said claim or defense, in writing, within fifteen days after receipt by you of written notice of the assignment or transfer of this contract to said holder.

"(4) You have a right at any time to pay off the full unpaid balance due under this contract, and in so doing you

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may receive a partial rebate of the time price differential and insurance charges.

"(5) You have a right under certain circumstances to redeem the property if repossessed because of your default, and you may, under certain conditions, require a resale of the property if repossessed.

"(6) The holder of this contract has no right to forcibly and without legal process enter your premises or commit any breach of the peace to repossess goods purchased under this contract."

(4) The printed terms for every retail installment contract shall be set in eight point type except as otherwise required herein. If the terms of a retail installment contract are contained on both sides of a page, there shall appear on the first page the following words in ten point boldface type: "The terms of this agreement are contained on both sides of this page." If the terms of a retail installment contract are contained on more than both sides of one page, there shall appear on the first side of each preceding page, the following words in ten point boldface type: "The terms of this agree-

Subsection (4) is new.

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| ment are contained on more than one page." | |
| (5) (a) No seller, sales finance company, or holder shall at any time take or receive any retail installment contract or a separate agreement relating thereto from a buyer or from any surety or guarantor for the buyer which contains: | Subsection (5) largely contains new provisions. |
| (b) Blank spaces to be filled in after execution except as provided in subsection (1) (b) of this section 8. | |
| (c) Any provision for confession of judgment or any power or warrant of attorney. | |
| (d) Any provision for repossession of the goods or motor vehicle or the acceleration of the time when all or part of the time sales price becomes payable except for any of the following reasons: Default in payment thereunder by the buyer; concealment of the buyer or the goods or motor vehicle or the intention by any person to do so; removal from this state of the buyer or the goods or motor vehicle or the intention by any person to do so; fraudulent conveyance or transfer or assignment of the goods or motor vehicle by the buyer or his intention to do so; fraud, false representation, or false pretense | |

TEXT | COMMENTS

by or on behalf of the buyer in the entering into of such contract or agreement; or abandonment, harmful neglect, or purposeful injury to the property by the buyer or any other person in possession of such goods or motor vehicle or the intention to do so.

(e) Any provision by which a buyer grants authority to the holder to forcibly and without legal process enter the buyer's premises or commit any breach of the peace in repossession of the collateral, if any.

(f) Any provision waiving rights or remedies which the buyer may have against the seller or holder of the retail installment contract or other person acting in his behalf.

(g) Any provision for payment of attorney fees.

(h) Any provision for payment of court costs or collecttion expenses, except as provided in section 10 (3) of this act, but this shall not prevent a court from assessing court costs.

(i) Any provision waiving the right to appeal an adverse judgment, or waiving rights to exemptions, or waiving the

provisions of any or all statutes of this state or of any or all rules of the supreme court of this state.

(j) Any provision by which the buyer agrees to perform services or contact other persons on behalf of the seller in return for a reduction in the cost of the goods or motor vehicle purchased.

(k) Any contract of employment under which the buyer is either an agent, servant, or independent contractor of the seller, entered into by the buyer at or about the time of signing the retail installment contract.

(l) Any schedule of payments under which any one installment (except the down payment) is not equal or substantially equal to all other installments (excluding the down payment) or under which the intervals between any consecutive installments, except the down payment, differ substantially unless (a) the buyer is given an absolute right upon default in any such excess or irregular installment to have the schedule of unpaid installments, including that in default, revised to conform in both amounts and intervals, or (b) unless the time and amounts

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of installments relate to the uneven seasonal income of the buyer and a statement to that effect appears in the contract.

(m) Any provision limiting, excluding, modifying, or in any manner altering the terms of warranties made in connection with the original sale.

(n) Where the retail installment contract is for the acquisition of consumer goods as defined in section 155-9-109, Colorado Revised Statutes 1963, as amended, except any airplane, any mobile home, or any item of personal property for which the cash sale price is three thousand dollars or more, any provision providing for or creating a security interest in personal property other than the goods or motor vehicle sold under the retail installment sales contract except such contracts involving personal property which, at the time of sale or subsequently, is so affixed to realty as to become a part thereof, whether or not severable therefrom.

(o) Any provision providing for or creating a security interest in goods or motor vehicles subject to a retail installment contract or contracts related to consumer goods as defined in section 155-9-109, Colorado Revised Statutes

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| 1963, as amended, unless two or more contracts are consolidated under a single contract pursuant to the provisions of section 11 of this act. | |
| (p) Any retail installment sales contract or any separate agreement relating thereto which violates any of the above provisions (b) through (o) shall be invalid and unenforceable, notwithstanding any other similar or alternative remedies provided by this act. | |
| (6) (a) Every retail seller or sales finance company, if insurance is included in a retail installment contract, shall, within thirty days after execution of the contract, send or cause to be sent to the retail buyer a policy or policies or certificate of insurance, which insurance shall be written by a company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance, and the scope of the coverage and all of the terms, exceptions, limitations, restrictions, and conditions of the contract or contracts of the insurance. | Subsection (6) includes new provisions. |
| (b) Where a seller undertakes to provide or supply in- | |

| TEXT | COMMENTS |
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| surance on the goods sold under a retail installment contract, at the buyer's expense, the amount charged any buyer for such insurance shall not exceed the premium actually payable by the seller. | |
| (c) The buyer shall have the privilege of purchasing insurance from the agent or broker or insurance company of his own selection, but in such case the inclusion of the insurance premium in the retail installment contract shall be optional with the seller. If the buyer selects his own licensed agent or broker, there shall be no obligation on the seller or sales finance company to forward a copy of the policy or policies or any certificate to the buyer. | |
| (d) The seller shall not require the purchasing of insurance from the licensee, or from an agent, broker, or insurance company designated by the seller, as a condition precedent to the sale of goods, and shall not decline any existing insurance when such existing insurance is provided by an insurance company duly licensed to do business in Colorado. | |
| (7) Any sales finance company may purchase or acquire | Provision in Subsection (7) |

| TEXT | COMMENTS |
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| from any retail seller any retail installment contract on such terms and conditions as may be mutually agreed upon not inconsistent with the provisions of this act. No filing of the assignment, no notice to the buyer of the assignment, and no requirement that the seller shall be deprived of dominion over the payments thereunder or the motor vehicle or goods covered thereby, if repossessed by the seller, shall be necessary to the validity of a written assignment of a retail installment contract as against creditors, subsequent purchasers, pledgees, mortgagees, and encumbrancers of the seller. However, the buyer of consumer goods, as defined by section 155-9-109, Colorado Revised Statutes 1963, as amended, under a retail installment sales contract, shall be entitled to assert against the holder any claim or defense which he may have against the seller, except that, if the holder is not the seller and is not related or affiliated with the seller, said claim or defense may be so asserted only if the buyer notifies said holder thereof, in writing, within fifteen days after receipt of written notice of the assignment or transfer of such contract to the holder. | referring to Uniform Commercial Code is new. |

TEXT

(8) An acknowledgment by the retail buyer of the delivery of any such copy, notice, or statement as required in subsections (1), (2), (3), (4), (5), and (6) of this section, contained in the body of the statement or contract, shall be presumptive evidence of delivery in an action or proceeding by or against any assignee of a retail installment contract.

(9) This section shall not apply to any commercial transaction wherein a loan is made as an unsecured loan, or upon the security of real estate, accounts receivable, or personal property held for resale or used in the business.

SECTION 9. Time price differential - official fees. (1) (a) Notwithstanding the provisions of any other law, a retail seller may contract for, charge, and collect, in connection with a retail installment sale of goods, a time price differential not exceeding the following, based on the base time price, or item (h) of subsection (2) of section 8:

(b) On that part of the base time price amounting to three hundred dollars or less, fifteen dollars per one hundred dollars per year.

COMMENTS

Subsection (8) is same as present law except "presumptive evidence" inserted in place of "conclusive proof."

Subsection (9) is designed to exempt commercial loans from the disclosure provisions and other provisions for consumer loans contained in Section 8.

Subsection (1) based on 121-2-4 (1), C.R.S. 1963. Rates are same as in present law.

TEXT | COMMENTS

(c) On that part of the base time price in excess of three hundred dollars and not in excess of one thousand dollars, twelve dollars per one hundred dollars per year.

(d) On that part of the base time price in excess of one thousand dollars, ten dollars per one hundred dollars per year.

(2) (a) Notwithstanding the provisions of any other statute, a retail seller may contract for and receive, in connection with a retail installment sale of a motor vehicle, a time price differential on the base time price not exceeding the following:

Subsection (2) based on 13-16-6 (6) (a), C.R.S. 1963. Rates are same as in present law.

(b) Class 1 -- any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made, eight dollars per one hundred dollars per year.

(c) Class 2 -- any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two years prior to the year in which the sale is made, twelve dollars per one hundred dollars per year.

| TEXT | COMMENTS |
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| (d) Class 3 -- any used motor vehicle not in class 2 and designated by the manufacturer by a year model not more than four years prior to the year in which the sale is made, fifteen dollars per one hundred dollars per year. | |
| (e) Class 4 -- any used motor vehicle not in class 2 or class 3 and designated by the manufacturer by a year model more than four years prior to the year in which the sale is made, seventeen dollars per one hundred dollars per year. | |
| (3) (a) When the retail installment contract is payable in substantially equal and consecutive monthly installments, the time price differential in subsection (1) or (2) of this section shall be computed from the date of the contract until the due date of the final installment, notwithstanding that the total time price balance is required to be paid in installments. | Subsection (3) based on 121-2-4 (2) and part of 13-16-6 (6) (b), C.R.S. 1963. |
| (b) A minimum time price differential of ten dollars may be charged on a retail installment sale of goods in which the time price differential, when computed at the applicable rate provided in subsection (1) of this section, results in a charge of less than such minimum amount. | |

TEXT | COMMENTS

(c) A minumum time price differential of twenty-five dollars may be charged on a retail installment sale of a motor vehicle in which the time price differential, when computed at the applicable rate provided in subsection (2) of this section, results in a charge of less than such minimum amount.

(4) When a retail installment contract provides for payment other than in substantially equal and consecutive monthly installments, the time price differential may be at a rate not exceeding the effective applicable maximum time price differential fixed in this section, having due regard for the schedule of installments. Such time price differential may be computed on the basis of a full month for any fractional monthly period in excess of ten days.

Subsection (4) based on 121-2-4 (3) and part of 13-16-6 (6) (b), C.R.S. 1963.

SECTION 10. Delinquency charges - collection expenses. (1) A retail installment contract may provide, and the holder thereof may collect, a delinquency charge on each installment in default for a period of at least ten days in an amount not in excess of five per cent of each installment in default or

Based on 121-2-7 and 13-16-6 (1) (c), C.R.S. 1963.

| TEXT | COMMENTS |
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| five dollars, whichever is less, but a minimum of one dollar may be collected as such delinquency charge. | Minimum delinquency charge increased from 25 cents to one dollar. |
| (2) In cases of default payment, in the event any holder of a retail installment contract shall elect to accept a late monthly payment, or accept a late monthly payment and collect the delinquency charges provided for in subsection (1) of this section, such holder shall be deemed to have waived his right to declare the full amount of the balance then due and owing under the acceleration clause, because of any other defaults or delinquencies then due and owing at the time of the acceptance of the late payment, for a period of one month. | |
| (3) In addition to such delinquency charge, the retail installment contract may provide for actual and reasonable out-of-pocket collection expenses incurred in connection with the actual repossession or foreclosure. | Reference to attorney fees and court costs removed from Subsection (3). |
| SECTION 11. Additional purchases of goods - memorandum-contents. (1) (a) Where a buyer makes a subsequent purchase of goods from a seller from whom he has previously purchased goods under one or more retail installment contracts and the | Based on 121-2-5, C.R.S. 1963, but revised to require more specific information and to allow buyer to pay off contracts in the same ratio as the goods were purchased. |

TEXT

COMMENTS

amounts thereunder have not been fully paid, the subsequent purchase may, by agreement of the parties, be added to one or more of the prior contracts. Each subsequent add-on purchase shall be a separate retail installment contract subject to all of the provisions of this act except that, in lieu of the buyer executing a retail installment contract as provided in this act, the seller shall, before the due date of the first installment under the consolidated contract, prepare and deliver to the buyer, or the buyer shall otherwise have in his possession at the time of the subsequent purchase, a written memorandum setting forth with respect to each subsequent purchase:

(b) The name of the seller and the buyer;

(c) The balances due under the prior contracts;

(d) Statements required by section 8 of this act;

(e) The additional time price differential to be paid by the buyer;

(f) The revised payment schedule, showing both payments for each contract as separate items and one figure showing the total amount to be paid on each installment date.

TEXT

COMMENTS

(2) Any security interest in the goods covered under a consolidated agreement shall terminate when the time sale price of the goods shall be paid. In determining when the time sale price of the goods has been paid, every down payment shall be allocated in its entirety to the purchase with respect to which it was made and all other payments made under the consolidated agreement shall be applied to all the various purchases in the same ratio as the original cash sales prices of the various purchases bear to the total of all such purchases.

SECTION 12. Mail and catalog sales. Retail installment contracts negotiated and entered into by mail without personal solicitation by salesmen or other representatives of the seller and based upon the catalog of the seller or other printed solicitation of business, which is distributed and made available generally to the public, if such catalog or other printed solicitation clearly sets forth the cash and time sale prices and other terms of sales to be made through such medium, may be made as provided in this section. All provisions of this act shall apply to such sales except that the seller shall not

Based on 121-2-6, C.R.S. 1963. Provision for written memorandum of the purchase added in last sentence.

**TEXT**

be required to deliver a copy of the contract to the buyer as provided in section 8 of this act, and if the contract, when received by the seller, contains any blank spaces, the seller may insert in the appropriate blank space the amounts of money and other terms which are set forth in the seller's catalog or other printed solicitation which is then in effect. In lieu of sending the buyer a copy of the contract as provided in said section 8, the seller, before the date for payment of the first installment, shall furnish to the buyer a written memorandum of the purchase containing all of the essential elements of the contract, including a statement of any items inserted in the blank spaces in the contract received from the buyer.

SECTION 13. Refunds on prepayments. Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay in full, before the maturity date of the contract, an amount or balance due and, in such event, he shall be entitled to and shall receive a refund credit thereon for such anticipation of payments, and if the retail installment contract included an amount for insurance, a further

**COMMENTS**

Based on 121-2-8 and 13-16-7, C.R.S. 1963. Specific reference to refund on insurance added, and authorization of "acquisition cost of five dollars per one hundred dollars --- not to exceed fifteen dollars" has been removed.

| TEXT | COMMENTS |
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| refund credit thereon for such anticipation, whether or not the maturity of the scheduled payment of the contract was accelerated by the holder. The amount of such refund shall be at least as great a proportion of the insurance charges and the time price differential as the sum of the monthly balances after the date of prepayment in full bears to the sum of all the monthly time balances under the schedule of payments in the contract. No refund need be made where the amount of the refund is less than one dollar. | |
| SECTION 14. <u>Requirements as to contents of credit agreements</u>. (1) (a) Every revolving credit agreement shall be based on a written agreement as to general rates of repayments, dates of repayments, and finance or service charges that will be levied by the seller, with a copy thereof, signed by both the buyer and seller to be furnished to the retail buyer. Thereafter, during each billing period the seller shall furnish the buyer with a statement of account containing the following: | Section 14 is new. |
| (b) The outstanding unpaid balance at the beginning and at the end of the billing period covered by the statement; | |

TEXT

COMMENTS

(c) The amount of payments made by the buyer during this period;

(d) A description and the cash sale price of goods purchased during the period covered by the statement;

(e) The finance or service charge;

(f) An enumeration of any other charges.

(2) (a) None of the following provisions, if contained in a revolving credit agreement or in a separate agreement relating thereto, shall be valid or enforceable:

(b) Any provision for confession of judgment or any power or warrant of attorney.

(c) Any provision for repossession of the goods or the acceleration of the time when all or part of the unpaid balance becomes payable except for any of the following reasons: Default in payment thereunder by the buyer; concealment of the buyer or the goods or the intention by any person to do so; removal from this state of the buyer or the goods or the intention by any person to do so; fraudulent conveyance or transfer or assignment of the goods by the buyer or his intention to do

**TEXT** | **COMMENTS**

so; fraud, false representation, or false pretense by or on behalf of the buyer in the entering into of such revolving credit agreement; or abandonment, harmful neglect, or purposeful injury to the property, by the buyer or any other person in possession of such goods or the intention to do so.

(d) Any provision by which a buyer grants authority to the holder to forcibly and without legal process enter the buyer's premises or commit any breach of the peace in repossession of the goods or collateral, if any.

(e) Any provision waiving rights or remedies which the buyer may have against the seller or holder of the revolving credit agreement or other person acting in his behalf.

(f) Any provision for payment of attorney fees.

(g) Any provision for payment of court costs or collection expenses, but this shall not prevent a court from assessing court costs.

(h) Any provision waiving the right to appeal an adverse judgment, or waiving rights to exemptions, or waiving the pro-

| TEXT | COMMENTS |
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| visions of any or all statutes of this state or of any or all rules of the supreme court of this state. | |
| (i) Any provision by which the buyer agrees to perform services or contact other persons on behalf of the seller in return for a reduction in the cost of the goods purchased. | |
| (j) Any contract of employment under which the buyer is either an agent, servant, or independent contractor of the seller, entered into by the buyer at or about the time of signing the revolving credit agreement. | |
| (k) Any provision limiting, excluding, modifying, or in any manner altering the terms of warranties made in connection with the sales. | |
| (l) When the revolving credit agreement involves the acquisition of consumer goods as defined in section 155-9-109, Colorado Revised Statutes 1963, as amended, any provision providing for or creating a security interest in personal property other than the goods sold under the agreement except such purchases involving personal property which, at the time of sale | |

TEXT

COMMENTS

or subsequently, is so affixed to realty as to become a part thereof, whether or not severable therefrom.

(m) Any revolving credit agreement or any separate agreement relating thereto which violates any of the above provisions (b) through (l) shall be invalid and unenforceable, notwithstanding any other similar or alternative remedies provided by this act.

(3) Unless notice has been given to the retail buyer of actual or intended assignment of a revolving credit agreement, payment thereunder or tender thereof made by the retail buyer to the last known holder of such agreement shall be binding upon any such subsequent holder or assignee.

(4) Upon written request from the retail buyer, the holder of a revolving credit agreement shall give or forward to the retail buyer a written statement of the dates and amounts of payments and the total amount unpaid under such agreement. A retail buyer shall be given a written receipt for any payment when made in cash.

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| SECTION 15. Maximum finance or service charge - delinquency charges - collection expenses. (1) Any finance or service charge levied under any revolving credit agreement may not exceed the rate of one and one-half per cent per month on the unpaid principal balance at the close of the monthly or other regular billing period. If the amount of any such finance or service charge is less than one dollar for any month, one dollar may be assessed, but no such charge may be assessed where there is a zero balance. | Section 15 is new. |
| (2) The holder of a revolving credit agreement may levy a delinquency charge where any payment is in default for a period of at least ten days after the due date if this delinquency charge is clearly noted in the revolving credit agreement and the monthly statement of account. A minimum delinquency fee of one dollar may be levied, but the maximum for such charge may not exceed five per cent of the payment in default or five dollars, whichever is less. | |
| SECTION 16. Civil penalties. Except as otherwise provided in this act, any person violating any of the provisions | Based on 121-2-9 and 13-16-9 (2), C.R.S. 1963, with recovery being limited to |

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| of sections 4, 5, 8, 9, 10, 11, 12, 13, 14, or 15, except as a result of an accidental or bona fide error, shall be barred (a) from recovery of any sum except the base time price minus all sums paid by the buyer at the time of or after the execution of the contract or agreement, when the buyer does not return the goods or motor vehicle purchased, or (b) from recovery of any sum when the buyer returns the goods or motor vehicle purchased to the seller or holder. | the base time price when buyer retains the motor vehicle or goods purchased and from any sum when purchased items are returned. |
| SECTION 17. <u>Criminal penalty</u>. (1) Any person engaged in the business of a sales finance company without a license therefor, unless expressly exempt therefrom, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five hundred dollars. | Based on 121-2-10 and 13-16-9 (1), C.R.S. 1963. |
| (2) Any person who violates the provisions of sections 4, 5, 8, 9, 10, 11, 12, 13, 14, or 15 of this act shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one thousand dollars. | |
| SECTION 18. <u>Repeal - status of pre-existing contracts</u>. (1) Article 16 of chapter 13 and article 2 of chapter 121, | |

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Colorado Revised Statutes 1963, as amended, are hereby repealed.

(2) Nothing contained herein shall be so construed as to impair or affect the obligation of any retail installment contract or revolving credit agreement lawfully entered into prior to the effective date of this act.

SECTION 19. Status of pre-existing licensees. Any person having a license in force on the effective date of this act, under the provisions of repealed article 16 of chapter 13, Colorado Revised Statutes 1963, as amended, shall, notwithstanding the repeal of such article, be deemed to have a license under the provisions of this article without the necessity of making application therefor, and on the effective date of this act, the commissioner shall issue to such licensee a new license to operate pursuant to the provisions of this act without the requirement of the payment of any further or additional license fee for the remainder of the year for which the prior license was issued.

SECTION 20. Saving clause. The repeal or amendment of any article, section, or part of a section of the laws of this

TEXT | COMMENTS

Colorado Revised Statutes 1963, as amended, are hereby repealed.

(2) Nothing contained herein shall be so construed as to impair or affect the obligation of any retail installment contract or revolving credit agreement lawfully entered into prior to the effective date of this act.

SECTION 19. Status of pre-existing licensees. Any person having a license in force on the effective date of this act, under the provisions of repealed article 16 of chapter 13, Colorado Revised Statutes 1963, as amended, shall, notwithstanding the repeal of such article, be deemed to have a license under the provisions of this article without the necessity of making application therefor, and on the effective date of this act, the commissioner shall issue to such licensee a new license to operate pursuant to the provisions of this act without the requirement of the payment of any further or additional license fee for the remainder of the year for which the prior license was issued.

SECTION 20. Saving clause. The repeal or amendment of any article, section, or part of a section of the laws of this

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| SECTION 23. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety. | |

**TEXT** | **Bill E** | **COMMENTS**

A BILL FOR AN ACT

CONCERNING CONSUMER LOANS AND REGULATING THE LENDING OF MONEY.

Be It Enacted by the General Assembly of the State of Colorado:

SECTION 1. Short title. This act shall be known and may be cited as the "Colorado Consumer Loan Act of 1967".

Based on 73-3-1, C.R.S. 1963.

SECTION 2. Definitions. (1) When used in this act, the following words have the meanings set out below, unless the context clearly requires a different meaning:

Based on 73-3-2, C.R.S. 1963.

(2) "Person" means any individual, partnership, association, trust, corporation, or any other legal entity.

(3) "License" means a license issued under authority of this act to any persons engaged in the business of making loans in accordance with the provisions of this act.

(4) "Licensee" means a person to whom one or more licenses have been issued.

(5) "Commissioner" means the state bank commissioner.

(6) "Engaged in the business of making loans" applies to every person who, for compensation, makes or assists in the making of any loan of money, or acts as a broker or intermediary

Limit of $1500 per loan omitted. Coverage expanded to include "loan brokers", "money finders," etc.

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| in the making of any loan of money, where the aggregate rate of interest, charges or consideration is greater than twelve per cent per annum over the total life of the loan. | |
| (7) "Contract of loan" means a promissory note or any other evidence of indebtedness executed by any borrower, comaker, or guarantor in connection with a loan. | |
| (8) "Loan" means the amount of money advanced to or for and on behalf of a borrower, including the amount required to retire an existing loan, insurance premiums, and costs incurred as permitted by section 15 of this act for and on behalf of the borrower in connection with the making of a loan, but not including any charges authorized by section 15 (1) of this act. | |
| (9) "Security interest" means any property right or title in property taken or retained by the lender to secure performance of any obligation of the borrower under the contract of loan, and any renewal or extension thereof. | Subsections (9), (10), and (11) are added definitions. |
| (10) "Official fees" means the amount of fees and charges prescribed by law for filing, recording, or otherwise perfecting or releasing or satisfying a security interest in real or | |

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| personal property, as permitted by this act, in connection with a contract of loan, which has been or will actually be paid to public officials. | |
| (11) "Holder" means a person entitled to enforce a contract of loan against the borrower, comaker, or guarantor. | |
| SECTION 3. <u>Maximum loan rate</u>. (1) Unless otherwise authorized by law, the maximum rate of interest for any loan of money shall be twelve per cent per annum on the unpaid balance. | Section 3 is new, based in part on 73-3-3 (1) and (3), C.R.S. 1963. |
| (2) Any contract of loan in violation of subsection (1) of this section shall be void, and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever. | |
| SECTION 4. <u>Scope - exemptions - penalty</u>. (1) No person shall engage in the business of making loans in this state without first having obtained a license from the commissioner. | Subsection (1) based in part on 73-3-3 (1), C.R.S. 1963. |
| (2) (a) The provisions of this act shall not apply to or affect the business transacted by any bank, trust company organized under article 16 of chapter 14, Colorado Revised Statutes 1963, savings bank, industrial bank, savings and loan | Subsection (2) (a) based on 73-3-3 (2) (a), C.R.S. 1963. |

TEXT | COMMENTS
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association, credit union, or pawnbroker operating under the provisions of other laws of this state, and none of the same shall be eligible to become a licensee under the provisions of this act. This act shall not apply to bona fide commercial loans made as unsecured loans or upon the security of real property, personal property held for resale or used in the business, or accounts receivable. This act shall not apply to the acquiring, directly or indirectly, by purchase or discount, of a bona fide obligation for goods or services, but the refinancing or extension of any such obligation with charges greater than twelve per cent per annum is subject to the provisions of this act.

(b) Nothing contained in this act shall be construed so as to abridge the rights of any of those exempted from the provisions hereof from contracting for or receiving interest or charges in conformity with any applicable statutes of the state or the United States.

Essentially same as 73-3-3 (2) (b), C.R.S. 1963.

(3) Any person, including any member, officer, director, agent, or employee thereof, who violates subsection (1) of this section, or who evades its application by any device,

Same as 73-3-3 (3), C.R.S. 1963. 1942 Uniform Small Loan Law Draft provides for a fine of from $100 to $1,000 or imprisonment for

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| subterfuge, or pretense whatsoever is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars. Any contract of loan in the making or collection of which any act is done which violates subsection (1) of this section is void, and the lender shall have no right to collect, receive, or retain any principal, interest, or charges thereon whatsoever. | not to exceed six months, or both. |
| SECTION 5. Application and fee. Application for license to make loans under this act shall be in writing, under oath, and in the form prescribed by the commissioner, and shall contain the name and the residence and business addresses of the applicant and, if the applicant is a partnership or association, of every member thereof, and if a corporation, of each officer and director thereof; also, the county or city and county with street address, if any, where the place of business is to be located; and such further relevant information as the commissioner may require. At the time of making such application, the applicant shall pay to the commissioner the sum of fifty | Largely the same as 73-3-4, C.R.S. 1963, with reference to county added and reference to city deleted. Licensees under the Moneylenders Act have annual license fee of $50 under 73-2-1 (1), C.R.S 1963. There is a question as to whether sufficient revenues will be raised under the fee schedule as drafted to offset the costs of administering this act. |

| TEXT | COMMENTS |
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| dollars as a fee for investigating the application and the additional sum of one hundred dollars when such place of business is in a county or city and county with a population of less than thirty thousand; one hundred fifty dollars when such business is to be conducted in a county or city and county with a population of thirty thousand or more but less than one hundred thousand; and two hundred fifty dollars when such business is to be conducted in a county or city and county with a population of one hundred thousand or more. Such additional sum shall be the annual license fee for a period terminating on the last day of the current calendar year when the application is made and license issued. | |
| SECTION 6. Investigation of application - license requirements - denial. (1) (a) Upon the filing of an application and the payment of the required fees, the commissioner shall fix a date and time for a hearing upon the application, and shall make an investigation of the facts concerning the application and the requirements provided for in subsection (2) of this section. At least fifteen days prior to the date | Subsection (1) generally same as 73-3-5 (1), C.R.S. 1963, with individual notification to existing licensees being eliminated and time limit for notification being extended from seven to 15 days prior to hearing. |

## TEXT

of such hearing, he shall publish notice of such hearing at least once in a newspaper of general circulation in the county or city and county wherein the applicant proposes to have his place of business, of such application and the date set for the hearing thereon. At such hearing any person may be heard with reference to the facts to be investigated. In addition to such hearing, the commissioner may make such other and further investigations relative to the application and the requirements as he may deem necessary.

(b) The commissioner shall grant or deny each application for a license within thirty days from the filing thereof with the required fee, unless the period be extended by written order of the commissioner issued within said thirty-day period.

(2) (a) If the commissioner shall find that the experience, financial responsibility, character, and general fitness of the applicant is such as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly, and efficiently within the purposes of this act, and if the commissioner shall find that the pro-

## COMMENTS

Subsection (2) (a) based on 73-3-5 (2), C.R.S. 1963, with a requirement for minimum unencumbered assets of at least $20,000, as in the 1942 Uniform Small Loan Law Draft, being added.

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| posed licensee has minimum assets of an unencumbered value of not less than twenty thousand dollars, and upon submitting satisfactory evidence to the commission that the applicant or, if a corporation, that the directors and officers or any stockholder owning ten per cent or more of the stock thereof has not been convicted of a crime during the prior ten years which involved fraud or violation of any trust, whether public or private, he shall thereupon enter an order granting such application and he shall forthwith issue and deliver a license to the applicant. Such license shall be a continuing license until surrendered, revoked, or suspended as hereinafter provided. | |
| (b) Each application shall be accompanied by a bond to be approved by the commissioner to the people of the state of Colorado in the penal sum of two thousand dollars, with a sufficient surety, and conditioned that the obligor will not violate any law relating to such business. If any person shall be aggrieved by the misconduct of any such licensee or by his violation of any law relating to such business, and shall recover a judgement therefor, such person, after a return | Subsection (2) (b) generally based on 73-2-3, C.R.S. 1963, for licensees under the Money-lenders Act. |

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| unsatisfied either in whole or in part of any execution issued upon such judgment, may maintain an action in his own name upon such bond in any court of competent jursidiction. The commissioner shall furnish to anyone applying therefor a certified copy of any such bond filed with him, upon the payment of a fee of two dollars, and such certified copy shall be prima facie evidence in any court that such bond was duly executed and delivered by each person whose name appears thereon. Said bond shall be renewed and refiled annually, not later than the twentieth day of December of each year, or the licensee shall cease doing business, and license shall be revoked by the commissioner, but said bond until renewed and refiled shall be and remain in full force and effect, for a period of three years from the time of approval thereof by the commissioner. | |
| (3) If the commissioner shall not so find, he shall enter an order denying such application and forthwith notify the applicant of the denial, returning the license fee. Within fifteen days after the entry of such an order, he shall prepare written findings and shall forthwith deliver a copy thereof to the applicant. | Subsection (3) same as 73-3-5 (3), C.R.S. 1963. |

TEXT | COMMENTS

SECTION 7. Content and posting of license - limitations - annual fee. (1) Each license shall state the address at which the place of business is to be located, and shall state fully the name of the licensee and, if the licensee is a partnership or association, the names of the members thereof, or the trade name or assumed name, if any, under which the licensee may desire to conduct such business. Each license shall be kept conspicuously posted in the licensed place of business and shall not be transferable or assignable.

*Comment:* Same as 73-3-6, C.R.S. 1963.

(2) (a) No license shall authorize or permit a licensee to engage in the business of banking as defined in chapter 14, Colorado Revised Statutes 1963, or to use the words "bank," "banker," or "banking" in its name, or to refer to itself as a bank or banker in any of its advertising. The term "advertising" includes all checks, drafts, money order, promissory notes, and other items of commercial paper and all letterheads, bills, handouts, and other materials upon which the name of the licensee is displayed.

*Comment:* Definition of "advertising" added in Subsection (2) (a).

(b) No licensee shall accept deposits, savings accounts,

*Comment:* "Savings accounts" added in

**TEXT** | **COMMENTS**

or issue certificates of deposit; but the foregoing prohibition shall not restrict the right of any licensee to borrow money by way of a promissory note labeled as such for the purpose of obtaining capital for use in its business.

the first part of Subsection (2) (b) and "promissory note" used in place of "notes, bonds, debentures, or similar evidence of indebtedness" in last part of this subsection.

(3) Every licensee shall, on or before the twentieth day of December in each year, pay to the commissioner the annual license fee for the next succeeding calendar year in the amount provided in section 5 of this act.

SECTION 8. Place of business - removal - residence. (1) Only one place of business shall be maintained under any license, but the commissioner may issue additional licenses to the same licensee upon compliance with all of the provisions of this act governing the issuance of a single license.

Subsection (1) largely the same as 73-3-7 (1), C.R.S. 1963, with "any" being used in place of "the same" license in first part of this subsection.

(2) No change in the place of business of a licensee to a location outside the original county or city and county wherein the licensee was first licensed to engage in the business of making loans shall be permitted under the same license. No licensee shall change his location within the same county or city and county without giving prior written notice thereof

Largely same as Subsection (2) of 73-3-7, C.R.S. 1963. 1942 Uniform Small Loan Law Draft provided in the commissioner with discretionary power to approve or disapprove changes in business locations.

TEXT

to the commissioner who shall approve such change of place of business and endorse the same upon the license.

(3) Nothing in this act shall be construed to limit or restrict the making of loans by a licensee to residents of the county or city and county in which the licensee's place of business is located.

SECTION 9. Revocation - suspension - reinstatement-surrender of licenses. (1) (a) The commissioner shall, upon twenty-days' written notice to the licensee by registered or certified mail, return receipt requested, stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, revoke any license issued hereunder if he finds that:

(b) The licensee has failed to pay the required annual license fee; or that

(c) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this act or any regulation or order lawfully made by

COMMENTS

Same as 72-3-7 (3), C.R.S. 1963.

Subsection (1) based on 73-3-8, C.R.S. 1963. Time of notice extended from ten to twenty days. The following cause for revocation, which was contained in the 1942 uniform draft, was not included: "Any fact or condition exists which, if it had existed or had been known to exist at the time of the original application for such license, clearly would have justified the Commissioner in refusing originally to issue such license."

TEXT

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the commissioner pursuant to and within the authority of this act;

(d) Licensee made a material misstatement in the application for license;

Subsection (1) (d), (e), and (f) are new.

(e) Licensee defrauded any borrower to the borrower's damage;

(f) Licensee failed to perform any valid written agreement with any borrower.

(2) If a licensee is a firm, association, or corporation, it shall be sufficient cause for the revocation of a license that any officer, director, or trustee thereof, or any member of a licensed partnership, has so acted or failed to act as would be cause for revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his employees while acting as his agent, if such licensee had actual knowledge of said acts and, after such actual knowledge, retained the benefits, proceeds, profits, or advantages accruing from said acts, or otherwise ratified said acts.

Subsection (2) is new.

**TEXT**

(3) If the commissioner finds that probable cause exists for revocation of any license and that enforcement of this act requires suspension of such license pending investigation, he may, upon five days' written notice by registered or certified mail, return receipt requested, and after a hearing, enter an order suspending such license for a period of not exceeding thirty days.

(4) Whenever the commissioner shall revoke or suspend any license issued pursuant to the provisions of this act, he shall enter an order to that effect and shall forthwith notify the licensee in writing by registered or certified mail, return receipt requested, of such revocation or suspension, which notice shall state the grounds therefor.

(5) The commissioner may reinstate any suspended license, or issue any new license to any person whose license has been revoked, if no fact or condition then exists which clearly would have justified the commissioner in refusing originally to issue such license under the provisions of this act.

(6) Any licensee may surrender any license previously

**COMMENTS**

Subsections (3) through (7) essentially same as 73-3-8 (2) through (6), C.R.S. 1963.

**TEXT**

issued by delivering such license to the commissioner with written notice of surrender, but such surrender shall not affect licensee's civil or criminal liability for acts committed prior to such surrender.

(7) No revocation, suspension, or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any obligor.

SECTION 10. Examination of licensee - investigations - records - order and injunctions. (1) (a) At least once each year the commissioner or his duly authorized representative shall make an examination of the place of business of each licensee and such of the loans, transactions, books, papers, and records of such licensee, insofar as they pertain to the business licensed under the provisions of this act, as the commissioner or his representative may deem necessary.

(b) The commissioner shall also, whenever in his judgment it may be necessary for the protection of the public or persons dealing with such licensees, cause a special examination to be made of any licensee. In such cases, the licensee shall pay to

**COMMENTS**

Subsection (1) based on 73-3-9 (1), C.R.S. 1963, with variation of provision in 1942 uniform draft that licensees are to pay actual costs of examination added in (1) (b) at the rate of $55 per day per examiner where special examinations are necessary to protect the public.

TEXT

the commissioner the sum of fifty-five dollars per day for each person engaged in the making of such special examination.

(2) Upon the filing of a written complaint with the commissioner by any borrower or his designated agent having reason to believe that any provision of this act or any other law relating to a contract of loan has been violated, which complaint sets forth the details of such alleged violation, or, for the purpose of discovering violations of the provisions of this act or of securing information lawfully required by this act, the commissioner or his duly authorized representative may, at any time between the hours of nine o'clock a.m. and five o'clock p.m. daily, except Saturdays, Sundays, and legal holidays, investigate the business and examine the books, accounts, records, and papers used therein of any licensee, or any other person engaged in the business of making loans, or participating in such business as principal, agent, broker, or otherwise, or any person who the commissioner has reason to

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Subsection (2) based on 73-3-9 (2), C.R.S. 1963 -- "or to assist in negotiating or making loan transactions" added, and authorization for a designated agent to file a written complaint with a commissioner also added.

| TEXT | COMMENTS |
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| believe is violating any provision of this act. For purposes of this act, any person who shall advertise for, solicit, or hold himself out as willing, for any consideration, to negotiate or make loan transactions, or to assist in negotiating or making loan transactions, shall be presumed to be engaged in the business of making loans. | |
| (3) The commissioner or his duly authorized representatives shall have and be given free access to the offices and places of business and files of all such persons, and shall have authority to require the attendance of any person and to examine him under oath relative to the loans, business, or subject matter of any examination, investigation, or hearing. | Subsection (3) same as 73-3-9 (3), C.R.S. 1963. |
| (4) Whenever the commissioner has reasonable cause to believe that any person is violating any provision of this act, he may, in addition to all other actions provided for in this act and without prejudice thereto, enter an order requiring such person to cease and desist as to such violation; and an action may be brought by the commissioner through the attorney | Subsection (4) same as 73-3-9 (4), C.R.S. 1963. |

| TEXT | COMMENTS |
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| general to restrain or enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In addition to all other means provided by law for the enforcement of a temporary restraining order, temporary injunction, or final injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for, the property and business of any such person, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent further violations of this act through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have powers and duties as to custody, collection, administration, winding up, and liquidation of said property and business as shall from time to time be conferred upon him by the court. | |
| SECTION 11. <u>Books and records - annual reports</u>. (1) Each licensee shall keep and use in his business such books, accounts, and records as the commissioner may require and as will enable the commissioner to determine whether such licensee | Subsection (1) same as 73-3-10 (1), C.R.S. 1963. |

TEXT

is complying with the provisions of this act and with the orders and regulations lawfully made by the commissioner. Each licensee shall preserve such books, accounts, and records for at least two years after making the final entry on any loan recorded therein.

(2) (a) Every licensee shall file an annual report concerning the business and operations during the preceding calendar year, in the office of the commissioner on or before the first day of April of each year. Such report shall include a financial statement of such licensee as of the thirty-first day of December next preceding; a statement of income and expenses; charges collected; and such other relevant information in such form and detail as the commissioner may prescribe. Any person having more than one license under the provisions of this act may file a consolidated report covering all of the licensed places of business.

(b) Such reports shall be made under oath and shall be in the form prescribed by the commissioner, who shall annually make an analysis and recapitulation of all such reports.

COMMENTS

Subsection (2) (a) and (b) based on 73-3-10 (2), C.R.S. 1963, as amended by chapter 29, Session Laws of 1964.

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| (c) Failure to file the reports required in this subsection (2) within the time prescribed therefor shall subject the licensee to a penalty of twenty-five dollars per day for each day such report is overdue. | Subsection (2) (c) is new. |
| SECTION 12. <u>Regulations and orders - copies of documents</u>. (1) The commissioner shall have authority to make rules and orders for the administration and enforcement of this act and to administer such rules and orders in accordance with the provisions of article 16, chapter 3, Colorado Revised Statutes 1963. | Based on 73-3-11, C.R.S. 1963. Reference to the administrative code procedures in article 16 of chapter 3, C.R.S. 1963, has been added in Subsection (1). |
| (2) On application of any person and payment of the costs thereof, the commissioner shall furnish, under his seal and signed by him or his deputy, a certified copy of any license, regulation, or order. In any court or proceeding, such copy shall be prima facie evidence of the fact of the issuance of such license, regulation, or order. | |
| SECTION 13. <u>Advertising</u>. (1) No licensee or other person subject to this act shall advertise, display, distribute, televise, or broadcast, or cause or permit to be advertised, | Based on 73-3-12, C.R.S. 1963. "Rates" and "conditions" of loans added in Subsection (1). |

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| displayed, distributed, televised, or broadcast, in any manner whatsoever, any false, misleading, or deceptive statement or representation with regard to the charges for, rates for, terms of, or conditions of loans. | |
| (2) The commissioner may require that charges or rates of charge, if stated by a licensee, be stated fully and clearly and in such manner as the commissioner may deem necessary to prevent misunderstanding thereof by prospective borrowers. Licensees shall not refer in their advertising to the fact that their business is under state supervision. | Last sentence in Subsection (2) changed to prohibit reference by licensees in their advertising that their business is under state supervision. |
| (3) Each licensee shall display in each licensed place of business, in a prominent place, a full and accurate schedule of the maximum rates of charges upon all classes of loans currently to be made by him. | Subsection (3) is new and is based on provision in 1942 uniform draft. |
| SECTION 14. Business confined to licensed office. (1) No licensee shall conduct the business of making loans under this act within the same office, suite, room, or business in which any business of a bank, trust company, savings bank, | Subsection (1) is new and is based on a provision in the 1942 uniform draft. 1942 uniform draft provision that is left out of the section to the effect that "no licensee shall take a lien upon real estate as security for any loan made under this Act, except such lien as is |

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industrial bank, savings and loan association, credit union, or pawnbroker is solicited or engaged.

(2) No licensee shall engage in the business of making loans provided for by this act under any name, or at any place of business within this state, other than that stated in the license.

SECTION 15. Charges - fees - loan splitting - insurance. (1) (a) Any person engaged in the business of making loans may contract for and receive charges upon any loan not exceeding one of the following two schedules:

Option A: Three per cent per month upon that part of the loan not exceeding three hundred dollars; one and one-half per cent per month upon that part of the loan in excess of three hundred dollars and not exceeding five hundred dollars; and one per cent per month on that part of the loan exceeding five hundred dollars.

Option B: One and three-fourths per cent per month on the total amount of any loan exceeding fifteen hundred dollars.

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created by law through the rendition or recording of a judgment."

Subsection (2) largely same as 73-3-13, C.R.S. 1963.

Subsection (1) (a) based in part on 73-3-14 (1) (a) and 73-2-5, C.R.S. 1963. Rate is same as at present for loans of $1500 or less, but maximum rate for loans in excess of $1500 reduced from two per cent per month to one and three-fourths per cent per month. This latter decrease is offset in part, however, by allowing the making of additional charges for official fees, etc., the same as are allowed for loans under $1500. Also, leaving Option A open at the end means that loans over $1500 would result in an effective lower interest rate under Option A than under Option B.

| TEXT | COMMENTS |
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| (b) Except as provided in subsection (4) of this section, charges made upon loans under this act shall not be paid, deducted, or received in advance. A licensee may express said charges in the instrument evidencing said loan as a per cent per month of the actual unpaid principal balance or portions thereof for the time actually outstanding and collect such charges upon said basis until the loan is fully paid; or precalculate the aggregate total of such charges which would be earned at the agreed rate if the loan were paid exactly according to the agreed payment schedule and add the same to the amount of the loan. For the purpose of computing such charges, a month shall be considered as thirty days and charges for any fractional portion of a month may be computed for each elapsed day at one-thirtieth of the monthly rate contracted for. | Essentially same as 73-3-14 (1) (b), C.R.S. 1963. Language relating to precalculation that was added in 1955 Colorado Consumer Finance Act is not part of the 1942 uniform draft. |
| (c) Where any loan is made by one person engaged in the business of making loans and another person has acted as a broker or intermediary in the making of said loan, the aggregate interest, charges, fees, or consideration charged the | Subsection (1) (c) is included to prevent duplication or compounding of loan charges when "loan broker" or "money finder" is involved. |

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borrower by both such persons shall not exceed those authorized by this act.

(2) A licensee or other person making and collecting a loan shall not compound such charges; but, if part or all of the consideration for a contract of loan is the unpaid principal balance of a prior loan, then the principal amount payable under such contract of loan may include any unpaid charges which have accrued.

(3) (a) The following requirements shall apply to a licensee or other person who precalculates charges and adds the same to the amount of the loan:

(b) If prepayment in full by cash, renewal, or refinancing occurs within sixty days after the date of making said loan, or if the contract of loan does not provide for substantially equal consecutive monthly installments, the licensee shall recalculate charges thereon and collect the same, at the per cent per month rate used to precalculate the charges originally added to the amount of the loan, upon the actual unpaid

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Based on 73-3-14 (2), C.R.S. 1963 -- "or other person" added in first line.

Based on 73-3-14 (3) C.R.S. 1963 -- "or other person" added in first sentence of Subsection (3) (a).

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| principal balances of the loan for the time actually outstanding. | |
| (c) If the contract of loan provides for repayment thereof in substantially equal consecutive monthly installments and if prepayment in full by cash, renewal, or refinancing occurs subsequent to sixty days after the date of making said loan, it shall be sufficient to refund or credit to the borrower that proportion of the total charges which the sum of the monthly balances scheduled to follow the installment date of the note nearest the date of prepayment bears to the sum of all monthly balances scheduled by the original contract of loan. | |
| (d) A licensee may charge, contract for, and collect a delinquency charge on each installment in default for a period of not less than ten days in an amount not to exceed two per cent of each such installment, and, where such delinquency charge results in a charge of less than one dollar, a minimum charge of one dollar may be made. Such delinquency charges collected shall be a credit to the borrower if recalculation is made as provided in subsection (3) (b) of this section. In | Minimum delinquency charge of one dollar added in Subsection (3) (d), and last sentence is new. |

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cases of default payment, in the event any holder of a contract of loan shall elect to accept a late monthly payment, or to accept a late monthly payment and to collect the delinquency charges provided for in this paragraph, such holder shall be deemed to have waived his right to declare the full amount of the balance then due and owing under the acceleration clause, because of any other defaults or delinquencies then due and owing at the time of the acceptance of the later payment, for a period of one month.

(e) If maturity of a loan contract is accelerated and the contract is paid in full, or upon commencement of a civil action thereon before the maturity date originally scheduled by the contract, the licensee shall reduce the balance by a credit of a portion of the charges computed in the same manner as though said loan has been prepaid in full by cash, renewal, or refinancing, and any judgment entered upon such contract of loan shall take into account such reduction.

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"Upon commencement of a civil action" used in place of "judgment is entered" in Subsection (3) (e).

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| (4) Official fees may be collected from the borrower at the time the loan is made or become a part of the amount of the loan. | Based on 73-3-14 (4), C.R.S. 1963. |
| (5) Upon foreclosure of a trust deed through the public trustee, actual and reasonable out-of-pocket costs of such foreclosure and a reasonable attorney's fee shall be permitted. Actual and reasonable out-of-pocket collection expenses other than attorney's fees incurred in connection with any other actual repossession or foreclosure shall be permitted. | Based on 73-3-14 (5), C.R.S. 1963. Unlike present law, attorney's fees would not be allowed as a part of collection expenses. |
| (6) (a) No licensee or other person shall induce or permit any person, nor husband and wife, jointly or severally, to become obligated, directly or contingently or both, upon more than one contract of loan at the same time for the purpose of obtaining a higher rate of charges than would otherwise be permitted by this act. | Based on 73-3-14 (6), C.R.S. 1963 -- "or other person" added in first line and statement that "the foregoing prohibition shall not apply to loans made to comakers or guarantors upon their own behalf" has been removed as being unnecessary. |
| (b) In the event an additional loan shall be made by a licensee or other person to a borrower having an existing loan or loans with such licensee or person, then such additional loan shall bear such charges as permitted by this act as though such | |

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| additional amount of loan had been consolidated into and added to the then existing balance of such prior loan or loans. | |
| (c) The provisions of this subsection (6) shall apply to the making of loans to the same borrower by licensees controlled, owned, or operated by the same parent company, corporation, association, partnership, or individual, notwithstanding that such licensees may be operating under separate licenses or other corporate or trade names, and for the purposes of this subsection (6), all such controlled, owned, or operated licensees shall be considered as the same licensee and governed by and be subject to the restrictions of this subsection (6). | |
| (7) (a) Only the following types of insurance may be obtained in connection with loans made under this act: | Based on 73-3-14 (8), C.R.S. 1963. |
| (b) Upon motor vehicles, fire, theft, windstorm; or comprehensive, including fire, theft, and windstorm, deductible collision securing the loan; and property damage and public liability insurance. | |
| (c) Fire and extended coverage insurance upon tangible property only when offered as security for a loan under this | |

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| act for an amount and terms and upon conditions which are reasonable and appropriate considering the nature of the property and the amount and maturity of the loan. | |
| (d) Insurance authorized by article 4 of chapter 73. | Subsection (d) added to recognize article 4 of chapter 73, C.R.S. 1963, relating to insurance as security for loans. |
| (e) The premium shall not exceed the premium fixed pursuant to law or by current applicable manual of a recognized insurance rating bureau, whichever is the lesser premium. | Language authorizing a licensee to receive commissions on the premiums paid for insurance has been omitted, and limitation as to lesser premium has been added. Provision that the "premium may be included in and become a part of the loan" also has been omitted. |
| (f) A licensee shall not require, nor in any way or manner coerce, the purchasing of insurance from the licensee, or from any agent, broker, or insurance company designated by the licensee, as a condition precedent to the making of the loan. A licensee shall not decline existing insurance when such existing insurance is provided by an insurance company duly licensed to do business in Colorado. A borrower may at any time substitute such existing insurance for insurance procured by or | Provision for refund of unearned premium has been added in Subsection (f). |

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| through a licensee, and shall be entitled to a refund of the unearned premium on the cancelled insurance procured by or through the licensee which is included in the contract of loan. | |
| (g) If insurance is included in the contract of loan, or if the borrower procures insurance by or through the licensee, the licensee shall, within thirty days after execution of the contract, deliver to the borrower, or if there are two or more borrowers, to one of them, a policy or policies or certificate of insurance, which insurance shall be written by a company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance, and the scope of the coverage and all of the terms, exceptions, limitations, restrictions, and conditions of the contract or contracts of the insurance. | Time for delivery of insurance policy extended from 15 to 30 days. Provisions relating to setting forth the amount of the premium kind of insurance, etc., have been added. |
| (h) Where the contract of loan provides for insurance at the borrower's expense, if any disbursement of any part of the charge for insurance is more than one year after the date of the loan, any interest charged on the amount to be disbursed after one year will be computed from the month disbursement is | Subsection (7) (h) is new. |

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made to the due date for payment of the final balance of the loan.

(8) Except as provided in this act, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, collected, or received by any licensee, holder, or other person engaged in the business of making loans. If any amount in excess of those permitted by this article is intentionally charged, contracted for, collected, or received except as a result of an accidental and bona fide error of computation, the contract of loan shall be void and the licensee, holder, or any other person engaged in the business of making loans shall forfeit, as liquidated damages, that part of the principal not to exceed three hundred dollars, and shall have no right to collect or receive any charges, interest, or recompense whatsoever; and the licensee, holder, or person engaged in the business of making loans, and the several members, officers, directors, agents, and employees thereof who shall have knowingly participated in such violation shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not

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Based on 73-3-14 (7), C.R.S. 1963. As provided in the 1942 uniform draft, intentional overcharging would result in a contract of loan being void and a licensee, holder, or other person engaged in the business of making loans could not collect any principal, charges, interest, or recompense whatsoever. In such cases under 73-3-14 (7), C.R.S. 1963, loan contracts are collectable as to the amount advanced thereunder, including advances for insurance premiums.

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| less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment, in the discretion of the court. | |
| SECTION 16. Contents of contracts -- requirements. (1) (a) The requirements of this section apply to every licensee, holder, or other person engaged in the business of making loans. | Based in part on 73-3-15, C.R.S. 1963, with more specific requirements added to accompany committee's draft on retail installment sales contracts and revolving credit agreements. |
| (b) (i) Where any loan is secured by a lien on property, either real or personal or both, the contract of loan, other than a promissory note, shall be in writing, shall contain all of the agreements of the parties, the date when signed, the date of the loan, the names and addresses of both the lender and the borrower, a specific itemization and description of any security interest taken or retained in realty and consumer goods as defined in section 155-9-109 (1), Colorado Revised Statutes 1963, otherwise the type of security interest, to secure performance of the obligation and shall be signed by the lender and the borrower, and by each comaker or guarantor, if any. An executed copy thereof shall be furnished to the bor- | |

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rower and to every other signer who is or may become legally liable on such contract of loan at the time of the execution of the contract except, where a husband and wife are the borrowers, only one copy need be furnished.

(ii) Where a promissory note is the only evidence of indebtedness for an unsecured loan, said note shall contain all of the agreements of the parties, the names and addresses of both the lender and the borrower, the date of the loan, and the date when signed; and shall be signed by the borrower, and by each comaker or guarantor, if any. Upon request at the time of the execution of such note, an unsigned copy thereof shall be furnished to the borrower, and to each person who is or may become legally liable thereon except, where a husband and wife are the borrowers, only one copy need be furnished.

(c) No contract of loan signed by a borrower is valid when it contains blank spaces to be filled in after execution.

(d) Any borrower shall have the right to repay a contract of loan in full or in part at any time.

(e) Upon the payment in full of a contract of loan, the

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holder shall mark the instrument "paid" or "cancelled" and within twenty days thereafter deliver the same to the person making such payment, restore any pledge, and deliver a release of any instrument securing the contract of loan, whether or not the same has been filed or recorded.

(f) Unless notice has been given to the borrower of actual or intended assignment of a contract of loan, payment thereunder or tender thereof made, or notice required or permitted by this act, by the borrower to the last known holder of such contract shall be binding upon such subsequent holder or assignee.

(g) Upon written request from the borrower, but not more often than once every six months, the holder of the contract shall give or forward to the borrower a written statement of the dates and amounts of payments and the total amount unpaid under such contract.

(h) When any payment is made on the contract of loan, the person receiving such payment shall give the person making the payment a complete written receipt therefor. If the person

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making the payment specified that the payment is made on one of several obligations, the receipt shall so state. A notation in a payment book of the amount of the payment or use of a coupon book system showing the amount of the payment shall be a sufficient compliance with this paragraph.

(i) If the borrower requests information for income tax purposes concerning the amount of interest paid in the previous calendar year, the holder shall provide it without charge once in every calendar year.

(2) (a) A contract shall contain the following items as such and in the following order:

(b) A copy of section 15 (1) of this act.

(c) A specific itemization and description of the realty and consumer goods as defined in section 155-9-109 (1), Colorado Revised Statutes 1963, otherwise the type of security, taken or retained to secure performance of the obligation.

(d) The amount of cash advanced to, or for and on behalf of, the borrower, but not including any precalculated interest.

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

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(f) The cost to the buyer, and each type of insurance, if any, permitted by this act, and included in the transaction, specifying the types of coverage.

(g) The agreed rate of interest charged, in amount if interest is precalculated, and in a per cent per month rate if interest is not precalculated. If interest is precalculated, the additional charge, if any, which may be collected for delinquency.

(h) The total cash amount owing as of the date of execution of the contract, shown by adding the amounts required by paragraphs (d), (e), (f), and (g) of this subsection.

(i) Schedule of the number of payments required and the amount and date of each payment necessary finally to pay the obligation.

(3) (a) A contract shall contain the following items which are rights of the person obligated under the contract, and duties of the holder of the loan, in ten point bold-face type or larger directly above the space reserved in the contract for the signature of the borrower: "Notice to Borrower:

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| "(i) Do not sign this contract if any of the spaces intended for the agreed terms to the extent of then available information are left blank.<br><br>"(ii) You are entitled to a copy of this contract at the time you sign it.<br><br>"(iii) If this contract is secured by realty, or by consumer goods as defined in section 155-9-109 (1), Colorado Revised Statutes 1963, you are entitled to bring against the holder of this contract any claim or defense which you may have against the lender.<br><br>"(iv) You have a right at any time to pay off the full unpaid balance due under this contract, and in so doing you are entitled to receive a refund or credit of a portion of the precalculated interest, if any, and a refund or credit of a portion of the insurance costs.<br><br>"(v) You have a right under certain circumstances to redeem the property which secures this contract if repossessed because of your default, and you may, under certain conditions, require a resale of the property if repossessed. | |

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| "(vi) The holder of this contract has no right to forcibly and without legal process enter your premises or commit any breach of the peace to repossess goods under this contract.<br><br>"(vii) You do not have to purchase insurance from the lender or anyone designated by him as a condition to the making of this loan. You may, instead, use existing insurance if it is provided by an insurance company duly licensed to do business in Colorado."<br><br>(b) Where a promissory note is the only evidence of indebtedness for an unsecured loan, said note shall contain only items (i), (ii), (iv), and (vii) of paragraph (a) of this subsection in the printed notice to borrower.<br><br>(4) The printed terms for every contract shall be set in eight point type except as otherwise required herein. If the terms of a contract are contained on both sides of a page, there shall appear on the first page the following words in ten point boldface type: "The terms of this agreement are contained on both sides of this page." If the terms of a contract are contained on more than both sides of one page, the following words shall appear on the first side of each preceding | |

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| page in ten point boldface type: "The terms of this agreement are contained on more than one page."<br><br>(5) (a) No licensee, person engaged in the business of making loans, or holder shall at any time take or receive any contract or a separate agreement relating thereto from a borrower or from any comaker or guarantor for the borrower which contains:<br><br>(b) Blank spaces to be filled in after execution.<br><br>(c) Any provision for confession of judgment or any power or warrant of attorney.<br><br>(d) Any provision for repossession of the property securing the obligation or for the acceleration of the time when all or part of the sum owing under the contract becomes payable except for any of the following reasons: Default in payment thereunder by the borrower; concealment of the borrower or the property securing the obligation or the intention by any person to do so; removal from this state of the borrower or the property securing the obligation or the intention by any person to do so; fraudulent conveyance or transfer or assignment of | |

TEXT

COMMENTS

the property securing the obligation by the borrower or his intention to do so; fraud, false representation, or false pretense by or on behalf of the borrower in the entering into of such contract; or abandonment, harmful neglect, or purposful injury to the property by the borrower or any other person in possession of such property securing the obligation or the intention to do so.

(e) Any provision by which a borrower grants authority to the holder to forcibly or without legal process enter the borrower's premises or commit any breach of the peace in repossession of the collateral, if any.

(f) Any provision waiving rights or remedies which the borrower may have against the lender or holder of the contract or other person acting in his behalf.

(g) Any provision for payment of attorney fees except upon foreclosure of a trust deed through the public trustee.

(h) Any provision for payment of court costs or collection expenses, but this shall not prevent a court from assessing court costs.

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(i) Any provision waiving the right to appeal an adverse judgment, or waiving rights to exemptions, or waiving the provisions of any or all statutes of this state or of any or all rules of the supreme court of this state.

(j) Any provision by which the borrower agrees to perform services or contact other persons on behalf of the lender in return for a reduction in the sum owing.

(k) Any schedule of payments under which any one payment is not equal or substantially equal to all other payments or under which the intervals between any consecutive payments differ substantially unless (i) the borrower is given an absolute right upon default in any such excess or irregular payment to have the schedule of unpaid payment, including that in default, revised to conform in both amounts and intervals, or (ii) unless the time and amounts of payments relate to the uneven seasonal income of the borrower and a statement to that effect appears in the contract.

(6) Any contract of loan in the making or collection of which any provision of this section shall have been violated,

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| either knowingly or without the exercise of due care to prevent the violation, shall be void, and the holder shall forfeit, as liquidated damages, that part of the principal not to exceed three hundred dollars, and shall have no right to collect or receive any charges, interest, or other recompense whatsoever. | |
| SECTION 17. Wage purchases or assignment deemed loan. The payment of any amount in money, credit, goods, or things of value as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, shall, for the purpose of regulation under this act, be deemed a loan of money secured by such sale, assignment, or order. The amount by which such compensation so sold, assigned, or ordered paid exceeds the amount of such consideration actually paid shall, for the purposes of regulation under this act, be deemed interest or charges upon such loan from the date of such payment to the date such compensation is payable. Such | Based on 73-3-16, C.R.S. 1963 -- "any amount" used to replace "fifteen hundred dollars or less" in first sentence. |

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| transactions shall be governed by and subject to the provisions of this act. | |
| SECTION 18. Wage assignment prohibited. No assignment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall be taken by any licensee or other person engaged in the business of making loans to secure any loan made. | Based on 73-3-17, C.R.S. 1963. |
| SECTION 19. Review. In addition to any other available remedy, any licensee or any person considering himself aggrieved by any act or order of the commissioner may, within thirty days after the entry of the order complained of, or within sixty days of the act complained of, if there is no order, bring an action in the district court of the city and county of Denver, for judicial review of such act or order. | Same as 73-3-18, C.R.S. 1963. |
| SECTION 20. Loans made elsewhere. Any loan or contract of loan made in any other state may be enforced in the state of Colorado. If the borrower signs the loan or contract of loan in Colorado, such loan shall be considered as having | Based on 73-3-21, C.R.S. 1963. Second sentence is new. |

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| been made in Colorado and shall be subject to the provisions of the applicable laws of this state. | |
| SECTION 21. Repeal - status of pre-existing contracts. (1) Articles 2 and 3 of chapter 73, Colorado Revised Statutes 1963, as amended, are hereby repealed. | Repeals Moneylender's Act of 1913 and 1955 Colorado Consumer Finance Act. Does not repeal Article 1 of Chapter 73, relating to interest, or Article 4 of Chapter 73, relating to insurance as security for loans. |
| (2) Nothing contained in this act shall be so construed as to impair or affect the obligation of any contract of loan between any person and any borrower which was lawfully entered into prior to the effective date of this act. | Same as 73-3-19 (2), C.R.S. 1963. |
| SECTION 22. Status of pre-existing licensees. Any person having a license in force on the effective date of this act under the provisions of repealed article 3 of chapter 73, Colorado Revised Statutes 1963, shall, notwithstanding the repeal of such article, be deemed to have a license under the provisions of this act without the necessity of making application therefor, and the commissioner shall issue to such a licensee a new license to operate pursuant to the provisions | Based on 73-3-20, C.R.S. 1963. |

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| of this act without the requirement of the payment of any further or additional license fee for the current year. Any person having a license in force on the effective date of this act, under the provisions of repealed article 2 of chapter 73, Colorado Revised Statutes 1963, shall, upon application therefor and upon payment of the required license fee provided for in section 5 and upon the filing of a penal bond as provided for in section 6, be issued forthwith a license by the commissioner to operate as a licensee under the provisions of this act. Thereafter such licenses may be continued in force subject to the provisions of this act by maintaining the penal bond on file with the commissioner as provided for in section 6 and by payment of an annual license fee in accordance with the provisions of subsection (3) of section 7. However, no such license shall be continued in effect or renewed if the licensee is operating his business in violation of section 14 of this act.<br><br>SECTION 23. Severability clause. If any provision of this act or the application thereof to any person or circum- | |

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| stances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.<br><br>SECTION 24. <u>Saving clause</u>. The repeal or amendment of any article, section, or part of a section of the laws of this state shall not have the effect to release, extinguish, or change, in whole or in part, any right, penalty, or liability, either civil or criminal, which may have been incurred thereunder; and any such article, section, or part of a section shall be considered as remaining in force for the purpose of sustaining any action, proceeding, or prosecution, civil or criminal, for the enforcement of such right, penalty, or liability, as well as for the sustaining of any judgment, decree, or order which may be rendered, entered, or made in any such action, proceeding, or prosecution.<br><br>SECTION 25. <u>Effective date</u>. This act shall take effect on July 1, 1967. | |

**TEXT**

SECTION 26. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

**COMMENTS**

Bill F

1 A BILL FOR AN ACT

2 CONCERNING CERTAIN CONTRACTS OF PURCHASE AND PROVIDING FOR THE
3 CANCELLATION OF SUCH CONTRACTS UNDER CERTAIN CIRCUMSTANCES.
4 Be It Enacted by the General Assembly of the State of Colorado:
5 SECTION 1. Short title. This act may be known and cited as
6 "The Colorado Consumer Home Sales Act of 1967".
7 SECTION 2. Definitions. (1) When used in this act, the
8 following words and phrases have the meanings set out below:
9 (2) "Transient dealer" means any person, either principal or
10 agent, who engages in the business of selling or soliciting the
11 sale of products, commodities, or services by appearing in person
12 at the home of the consumer to whom such sale is being offered,
13 but this term does not include any person who delivers such goods
14 as newspapers, milk, or bread where the delivery of such is made
15 on a regular route pursuant to a weekly or monthly order or sub-
16 scription, and neither does this term include minors or members
17 of religious, fraternal, charitable, or civic organizations making
18 occasional sales in their local neighborhoods.
19 (3) "Products, commodities, or services" include all manu-
20 factured goods, wares, merchandise, and services, except con-
21 tracts of insurance, corporate shares, investment fund certifi-
22 cates, debentures, real property and any fixtures then attached
23 thereto, live animals, or any agricultural products except food.
24 SECTION 3. Contracts voidable - requirements of written
25 instruments. Notwithstanding any other provision of law to the
26 contrary, unless the name, address, and telephone number of the
27 transient dealer, and, if the dealer is an agent, the name,
28 address, and telephone number of his principal appear on the face
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1 of any contract, promissory note, or other written instrument
2 evidencing an obligation of the purchaser in connection with the
3 sale of any product, commodity, or service by such transient
4 dealer, said contract, promissory note, or other written instru-
5 ment shall not be assignable, negotiable, or enforceable under
6 the laws of this state.

7 SECTION 4. Contract binding - when. (1) Any contract re-
8 lating to the purchase of any product, commodity, or services,
9 where the value of such product, commodity, or services equals
10 or exceeds one hundred dollars and includes the making of a
11 promissory note or installment contract, shall be considered bind-
12 ing at the time of the signing of the contract by all parties
13 concerned; but if such contract is signed at the residence of the
14 person contracting for the purchase of such product, commodity,
15 or services, said purchaser may notify the seller, within twenty-
16 four hours after such signing, of his desire to cancel said con-
17 tract, and such cancellation shall be effective thereupon.
18 Notice of cancellation under this subsection (1) shall be given
19 to the seller at the place of business of the seller as set forth
20 in the agreement and, in the event that the purchaser is unable
21 to contact the seller, the purchaser's evidence of a reasonable
22 attempt to contact said seller shall suffice.

23 (2) (a) In the event of cancellation pursuant to this sec-
24 tion, within ten days after such cancellation the seller shall
25 refund to the purchaser all deposits made, including any down
26 payment or goods traded in to the seller on account or in con-
27 templation of the contract, less any reasonable costs actually
28 incurred by the seller in making the product or commodity ready
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1 for sale under the provisions of the contract.

2 (b) In the event of cancellation pursuant to this section,
3 the seller shall be entitled to reclaim and the purchaser shall
4 return or hold at the seller's disposal any product or commodity,
5 if any, received by the purchaser under the contract agreement.
6 The purchaser shall incur no additional liability for cancella-
7 tion of a contract pursuant to this section.

8 (3) Effective July 1, 1967, all contracts relating to the
9 sale and purchase of any product, commodity, or services, where
10 the value of such product, commodity, or personal services
11 equals or exceeds one hundred dollars and includes the making of
12 a promissory note or installment contract which is signed at the
13 residence of any person making the purchase, shall contain a copy
14 of subsections (1) and (2) of this section in eight-point bold-
15 face type. All such contracts shall further contain a provision
16 relating to the time and date of the signing of the contract and
17 the address of the place where the signing took place, all of
18 which shall be filled out immediately prior to the affixing of the
19 purchaser's signature thereto.

20 (4) Any contract made by any person, firm, partnership, or
21 corporation in violation of any of the provisions of this section
22 is hereby declared to be a void contract, and no recovery thereon
23 shall be had.

24 SECTION 5. <u>False statement - fraud - penalty</u>. No transient
25 dealer shall knowingly commit any fraud or make any misrepresen-
26 tation in the transaction of his business as a transient dealer
27 such as the making of any false statement concerning the product,
28 commodity, or service he is selling. Every person convicted of a
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1 violation of this section shall be punished by a fine of not less
2 than ten nor more than one hundred dollars, or by imprisonment in
3 the county jail for not less than ten days nor more than one year,
4 or by both such fine and imprisonment.
5 SECTION 6. <u>Severability clause</u>. If any provision of this
6 act or the application thereof to any person or circumstances is
7 held invalid, such invalidity shall not affect other provisions
8 or applications of the act which can be given effect without the
9 invalid provision or application, and to this end the provisions
10 of this act are declared severable.
11 SECTION 7. <u>Effective date</u>. This act shall take effect on
12 July 1, 1967.
13 SECTION 8. <u>Safety clause</u>. The general assembly hereby
14 finds, determines, and declares that this act is necessary for the
15 immediate preservation of the public peace, health, and safety.
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1 A BILL FOR AN ACT

2 CONCERNING CONTRACTS TO FURNISH A FINAL RESTING PLACE, PERSONAL
3 PROPERTY, OR SERVICES OF ANY NATURE UPON THE DEATH OF ANY
4 PERSON, DEFINING CERTAIN TERMS, AND PROVIDING FOR LIQUIDATED
5 DAMAGES IN THE EVENT OF DEFAULT OR CANCELLATION THEREOF.

6 Be It Enacted by the General Assembly of the State of Colorado:

7 SECTION 1. 14-19-2 (1), Colorado Revised Statutes 1963, and
8 14-19-2 (2) and (5), Colorado Revised Statutes 1963 (1965 Supp.),
9 are amended to read:

10 14-19-2. Definitions. (1) "Person", UNLESS THE CONTEXT
11 OTHERWISE REQUIRES, means an individual, partnership, firm, joint
12 venture, corporation, company, association, or joint stock as-
13 sociation.

14 (2) "Contract" means ANY contract, agreement, mutual under-
15 standing, series or combination of contracts, agreements, mutual
16 understandings, and any security or other instrument which is
17 convertible into a contract, agreement, or mutual understanding,
18 whereby it is agreed that upon the death of ~~a specified~~ ANY per-
19 son a final resting place, personal property, or services of any
20 nature shall be provided, delivered, or performed in connection
21 with the preparation or cremation of such person's body for final
22 disposition or in connection with the interment, entombment, or
23 other final disposition of such person's remains or in connection
24 with the memorializing or marking of the decedent, the decedent's
25 remains, or the final resting place of such remains; ~~provided,~~
26 ~~that~~ BUT this term shall not include policies of life insurance
27 payable in money which are subject to regulation under other laws
28 of this state, nor shall it include a sale by the owner thereof
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1 of a cemetery lot, plot, or grave space, or niche or crypt if,
2 upon receipt of full payment therefor, the purchaser acquires a
3 conveyance of and a vested interest in an existing, specific, and
4 identifiable lot, plot, grave space, niche, or crypt.
5 (5) "Decedent" means ~~the~~ ANY person specified OR INCLUDED in
6 the contract, upon whose death a final resting place, personal
7 property, or services OF ANY NATURE shall be provided, delivered,
8 or performed.
9 SECTION 2. 14-19-8 (4), Colorado Revised Statutes 1963
10 (1965 Supp.), is amended to read:
11 14-19-8. Contents of contract - procedure. (4) Except in
12 case of default or cancellation, a contract shall contain no pro-
13 vision limiting the liability of the contract seller to less than
14 furnishing the goods and services expressed in the contract, or,
15 in the alternative, at the option of the contract buyer or his
16 legal representative or next of kin, to payment of the full amount
17 paid by the contract buyer under the contract. In case of default
18 or cancellation, no contract, or promissory note executed in con-
19 nection therewith, shall provide for the retention by the contract
20 seller of liquidated damages of more than ~~the~~ FIFTEEN PER CENT OF
21 THE TOTAL amounts paid by the contract buyer. ~~or-fifteen-per-cent~~
22 ~~of-the-total-contract-price,-whichever-is-the-lesser.~~
23 SECTION 3. Application of act. This act shall apply only
24 to contracts, as defined herein, entered into on or after the
25 effective date of this act.
26 SECTION 4. Effective date. This act shall take effect on
27 the first day of the first month following its enactment.
28 SECTION 5. Safety clause. The general assembly hereby finds,
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1 determines, and declares that this act is necessary for the
2 immediate preservation of the public peace, health, and safety.
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## CONSUMER PROBLEMS IN COLORADO

The increasing trend of Americans to live in urban areas has brought on numerous problems that did not exist for most persons 20 or more years ago. Among other things, one result of this population movement has been the growth of impersonal relationships in the market place between buyer and seller. Whereas a relatively few years ago many persons knew the seller with whom they were dealing, today in most large population centers it is the exception rather than the rule for the buyer to be acquainted with the seller.

This situation, where buyers rely on faith as to the honesty of the seller rather than on personal acquaintanceship or knowledge as to his character and background, has contributed to the existence of what has been generally termed consumer problems. Recognition of this situation caused the Forty-fourth General Assembly to direct the Legislative Council to conduct a study in 1964 of consumer and funeral problems, with a report and recommendations to be submitted to the 1965 session.

The 1964 study focused mainly on problems within the funeral industry, although the committee conducting this study developed a substantial amount of preliminary information concerning consumer problems in Colorado, as may be noted in the report submitted to the Forty-fifth General Assembly.[1]

In the broad sense of the term, several bills were passed in the 1965 session that were designed to deal with consumer problems. Of these, five bills -- House Bills 1201 and 1202 and Senate Bills 239, 276, and 281 -- resulted from recommendations of the 1964 Legislative Council study. House Bills 1201 and 1202 amended the state's securities law; Senate Bill 239 revised Colorado's preneed funeral arrangement law; Senate Bill 276 changed the membership of the State Board of Funeral Directors and Embalmers to include two lay members as well as providing for clarification to consumers as to charges for funerals; and Senate Bill 281 created a state cemetery board and provided for the licensing and regulation of commercial cemeteries.

Other consumer-problem type legislation enacted in the 1965 session concerned such areas as diploma mills, garnishment, industrial banks, passenger car tires, brake fluid, and debt management companies. At the same time, however, several bills were proposed in the 1965 session that were not enacted. Six of these bills would have changed Colorado laws to provide for increased notice to consumers in various matters, and several bills would

1. Consumer and Funeral Problems, Colorado Legislative Council, Research Publication No. 94, November 1964.

have amended the state's law with respect to garnishment and attachment. Other proposals were concerned with collection agency practices, proprietary schools, reducing interest rates on loans for more than $1,500, subdivision developments, false and misleading advertising, and door-to-door selling.

In view of the interest for additional legislation dealing with consumer problems and the fact many members of the General Assembly felt that more information was needed before taking final action on some of the proposals introduced in the 1965 session, House Joint Resolution 1024, 1965 session, included the directive that the Legislative Council was to undertake "a study of consumer problems for the purposes of determining if Colorado law is adequate to safeguard the rights of its citizens from questionable sales promotion devices and individuals. Said study shall include, but not be limited to, the problems of land subdivisions, disclosure, and amount of interest rates, collection practices, causes of bankruptcies, a continuing review of funeral and preneed practices, and other consumer problems."

Members of the committee appointed by the Legislative Council to carry out this directive of the General Assembly reviewed their assignment at the committee's first meeting, which was held on June 21, 1965, and the members agreed to attempt to consider the following specific subjects during 1965 and 1966: subdivisions, proprietary schools, the feasibility of a consumer protection agency, misleading advertising, door-to-door sales, disclosure, amount of interest rates, collection practices, causes of consumer bankruptcies in Colorado, and a review of preneed funeral changes adopted in the 1965 session and their administration. By meeting at the rate of almost once a month when the General Assembly was not in session, the committee was able to reach conclusions and recommendations on all of these subjects except causes of consumer bankruptcies, where preliminary information only was developed, and on collection practices, which the committee was unable to consider due to a lack of time. In fact, following an interim report of the committee to the 1966 session,[2] a bill prepared by the committee to regulate proprietary schools was, with minor amendments, enacted by the General Assembly and was approved by the Governor (Chapter 39, Session Laws of 1966).

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2. Progress Reports on.....Consumer Problems...., Colorado Legislative Council, Research Publication No. 109, December 1965, pp. 69-86.

## Consumer Protection Agency

Since the late 19th century when federal antitrust legislation was enacted, protection of the buying public at all levels of government has developed. On the state level, governmental departments were given certain pieces of law to administer, such as weights and measures and food and drug laws. As more legislation along these lines was enacted, some existing agencies had their original functions expanded, and some new agencies, such as public utilities commissions, banking and insurance departments, and occupational licensing boards, were created.

In recent years, this consumer-protection trend has resulted in the creation of several state agencies whose functions are to recommend or enforce consumer protection laws. These offices differ from other existing agencies in that their scope is broader than that of protecting the consumer from unlawful practices involving only one service, such as a barbers' licensing board, and their primary functions often include that of recommending legislation.

In one state -- Connecticut -- a separate department-level agency exists to protect consumers and reflects the evolution of legislative concern with consumer protection. Originally created to enforce food and dairy laws, the Food and Dairy Commission has been given additional duties, such as licensing athletic events, and has been renamed the Department of Consumer Protection.

In two states -- California and Massachusetts -- agencies within the Governor's office have been created whose functions include that of recommending consumer-protection legislation. These agencies also act as state-level consumer representatives before other state governmental bodies.

In at least ten states since 1957, state Attorneys General have created consumer protection bureaus, sections, or divisions within their offices to enforce new consumer-protection laws or to assist local government peace officers in the detection, apprehension, and prosecution of persons allegedly violating consumer fraud laws, or both. In most of these states, these bureaus, sections, and divisions have been created to enforce new consumer fraud laws, which represent two recent developments in these states: (1) a trend to provide other abatement techniques, such as written assurances of discontinuance, for use by enforcement authorities who already had criminal, quasi-criminal, and civil penalty prosecution alternatives; and (2) a trend either to remove consumer-protection enforcement jurisdiction from local prosecutors and to give this jurisdiction to the state's Attorney General, or to give the Attorney General concurrent jurisdiction with the local authorities in this area of enforcement.

The general reasons most often cited for these recent developments are that the greatest amount of consumer fraud is intrastate in nature and is, therefore, a problem of particular concern to state, and not local, law enforcement authorities, and that the use of general criminal sanctions is an ineffective remedy in consumer fraud cases because of the difficulty and burdens inherent in criminal prosecutions.

Each state prohibits many specific acts and practices involving buying and selling: there are hundreds of consumer-fraud or consumer-protection laws in the states dealing with trades and services -- e.g., barbers, funeral directors, and debt-adjustors; commodities -- e.g., automobiles and weights and measures; regulation of health -- e.g., narcotics, and milk and meat inspection; and fraudulent practices such as false advertising. The new consumer protection laws reflect the belief that present laws are too specific and, consequently, too inflexible to prevent new consumer-fraud schemes; that government regulation, if any, is uncoordinated and, consequently, prevents any systematic program of over-all supervision and responsibility; and that the Attorney General has no specific statutory authority to enforce the existing laws.

On the basis of information developed during 1965 and 1966, the situation with respect to state consumer protection agencies may be classified as follows:

A. <u>Agencies whose primary functions are recommending legislation and representing the consumer before governmental bodies</u>:

   1. Agencies organizationally located in executive branch outside of Governor's office:

      Connecticut

   2. Agencies located within Governor's office:

      Massachusetts
      California

B. <u>Agencies whose primary function is enforcing consumer-protection legislation</u>:

   1. Agencies located within Attorney General's office:

      a. Agencies known to exist (a reply was received from each state's Attorney General confirming the existence of a consumer fraud bureau):

         Hawaii
         Kansas
         Michigan

Missouri
New Jersey
New Mexico
New York
North Dakota
Ohio
Washington

b. Agencies thought to exist (a reply was not received from the Attorney General):

Alaska
California
Illinois
Minnesota
Oregon
Wisconsin

Connecticut Department of Consumer Protection

In Connecticut, the only state known that has a consumer protection department in the executive branch of state government, the Department of Consumer Protection reflects the evolution of the state's concern with consumer protection, an early decision to place food and dairy product inspection in an agency other than the agriculture department, and a legislative concern for administrative organization.

According to the consumer protection department's commissioner, the department was originally known as the Dairy and Food Commission and was concerned with the inspection of these products. Later, after it was given drug responsibilities, its name was changed to the Food and Drug Commission. Still later, the Connecticut legislature gave additional duties to the commission, duties other than food and drug inspection, and, in 1959, renamed the commission the Department of Consumer Protection. The most recent duties given the department include the administration of the 1965 Consumer Fraud Act.

Under its present laws, this department has ten divisions, nine of which -- administration, food, consumer frauds, weights and measures, drugs, athletics, and kosher meat inspection -- are under the direct supervision of the commissioner. The department's commissioner is assisted by two voluntary boards, one of which consists of a group of Rabbis who serve in an advisory capacity on matters of kosher foods, and the other one of which consists of members of medical and paramedical societies who serve in an advisory capacity on matters of food and drugs. Under the general supervision of the commissioner is the Pharmacy Commission, composed of five commissioners appointed for five-year overlapping terms by the Governor. This pharmacy commission, in turn, supervises the department's tenth division, the pharmacy division.

To carry out its activities, the department's 1965-67 biennial budget amounts to $1,094,350, all of which is appropriated from the general fund. Of this amount, approximately $730,000 is provided for the salaries of the department's five administrative, 57 inspectional, and nine clerical employees, all of whom are full-time employees. The biennial personal expenses of the five part-time pharmacy commissioners amounts to $7,000. The department's central office is in Hartford, although some of its inspectional employees use their homes as "official-duty stations."

The department's newest division, the consumer fraud division, is headed by the department's food division chief, and consists of two sections, clerical and investigation. The latter section reviews all suspected infractions of the:

(1) Fair Trade Act;
(2) Fraudulent Advertising Act;
(3) Itinerant Vendors Act;
(4) Cigarette Pricing Act; and
(5) Consumer Fraud Statutes.

Massachusetts Consumers' Council

The Massachusetts Consumers' Council was created in 1963 and represented an outgrowth of early 1950 legislation and a 1958 decision by the commonwealth's Attorney General to create an advisory consumers' council and a consumers' counsel division within his office by administrative action. According to one of its recent quarterly reports, the council acts as a channel for consumer opinion about the market place, and acts on its own initiative to give expression before public bodies on the consumer's viewpoint on economic problems.

The present council is composed of the Attorney General, Public Utilities Commission chairman, Bank Commissioner, Insurance Commissioner, Labor and Industries Commissioner, and eight private citizens, one of whom must be a member of the Massachusetts State Labor Council, AFL-CIO, not more than five of whom must be members of the same political party, and all of whom are appointed by the Governor with the advice and consent of the state's executive council. Council members serve terms that are concurrent with the Governor's and are paid only their necessary expenses. The council must meet at least once each month, but may meet more frequently at the call of the council's chairman, a council member designated as such by the Governor.

The law creating this council directs it to carry out the following:

(1) Conduct studies, investigations, and research;

(2) Advise the executive and legislative branches in matters affecting consumer interests;

(3) Coordinate consumer services carried on by state departments and agencies;

(4) Further consumer education;

(5) Inform the public through appearances at federal and state committee, commission, or department hearings, of such policies, decisions, or legislation as is beneficial or detrimental to consumers;

(6) Inform the Governor and the Attorney General and other law enforcement agencies of such violations of laws or regulations affecting consumers as its investigations or studies may reveal; and

(7) Study and report all matters referred to it by the state's legislature or the Governor.

The council is authorized to appear, through its chairman, or a member or person designated by him, or through the Attorney General, for and in behalf of the people of the commonwealth, before boards, commissioners, commissions, departments, or agencies of the commonwealth in any hearing or matter affecting the rights of the consuming public or in any proceeding seeking the curtailment of railroad services or an increase of rates or costs of services or commodities, and is deemed an aggrieved party for the purpose of judicial or administrative review of any decision or ruling in any such proceedings in which it has appeared. The council also is authorized to call upon any department, board, commission, etc., of the commonwealth or of any of its political subdivisions for such information as it may desire in the course of fulfilling its duties and functions. The council is empowered to hold public hearings, and has the duty to establish rules or procedure governing the conduct of these hearings, which must be made available in printed form to each witness prior to his testimony at a hearing. Witnesses at hearings have the right to be represented by counsel, and, before testifying, must be sworn.

To assist in the performance of its activities, the council is authorized to, and has appointed, an executive secretary, outside the state's civil service, and other employees. Currently, the council has three employees -- an executive secretary, an assistant executive secretary, and one clerk -- and a $28,000 annual budget. The executive secretary has reported that he was somewhat disenchanted with the council's enabling act:

> Please bear in mind that Massachusetts is one of the large industrial states with many industrial cities. This magnifies the problem with which we are confronted. If I were to rewrite this law, I would have provided for a statutory Assistant Attorney General assigned to this office. While we are not supposed to be an enforcement agency, it is obvious to the writer that because

> of the structure of our state government, we are ending up as somewhat of a coordinator of the enforcement of consumer protection laws. This comes about because of the natural split in functions and authority of the several departments of the government. One agency might have one specific law to administer and enforce while another agency might have additional statutory authority, both of which are the answer to a chronic problem as far as consumer protection is concerned. It is not possible to write a short memorandum to you to explain all the ramifications that have resulted from the establishment of this agency. I would simply state that, in view of the current developments of our economy and society, if this agency did not exist, something like it would have to be created. We are in effect an auditing body on state laws and functions as they affect the consumer. We have been the one agency of government that other agencies can turn to for support of needed consumer legislation.

The enabling act does allow the Governor to request the Attorney General to provide the council with such legal assistance as is necessary for the council to carry out its duties and functions, however.

The council's activities during April, May, and June of 1965, as reported in its second quarterly report for 1965, included:

(1) The processing of 414 complaints received by the council, of which 192 were reported as "equitably-adjusted" complaints; and

(2) Following the progress of the 15 bills filed by the council earlier in the year with the General Court for consideration during its legislative session. These 15 bills were intended to:

   a. Require the annual inspection of weights and measures in towns of 5,000 or less inhabitants;

   b. Regulate certain employment advertising;

   c. Prohibit the adjustment of odometers for the purpose of misrepresenting the vehicles' mileage;

   d. Regulate the sale of motor vehicles that cannot pass the state inspection standards;

   e. Set minimum specifications for new tires;

f. Regulate the sale of retreaded tires;

g. Regulate the identity and quantity of packaged commodities;

h. Provide a penalty for selling merchandise by means of a referral scheme;

i. Regulate the operation of dancing schools, and requiring the registration of same;

j. Provide for an investigation and study by a special commission of the licensing and rating of all private schools;

k. Provide for indemnification to Blue Cross subscribers treated at non-member hospitals;

l. Abolish the Small Loans Regulatory Board, and establishing a maximum charge on loans of $3,000, or less;

m. Require the disclosure of finance charges in connection with extensions of credit;

n. Require a cooling-off period in installment contracts; and

o. Regulate advertising relative to the sale or offering for sale of merchandise, commodities or services at special prices, which sale or offer is subject to limitations on the quantity that may be purchased or conditioned on the purchase of other merchandise or commodities.

The council's activities during the first half of 1965, as reported in the same quarterly report, included the:

(1) Initiation of action against a tour firm that would not return refund moneys and whose planned tours had been cancelled as a result of litigation between the firm and its air line carrier. This action recovered $152,000 for the firm's customers, and was initiated by the Massachusetts Attorney General after the council discovered the customers were not being represented in the litigation;

(2) Presentation of evidence on behalf of its subscribers that enabled the Commissioner of Insurance to order a much lower rate increase after Blue Cross-Blue Shield had applied for a rate increase; and

(3) Assisting in the adjustment of citizen complaints. In one case, an adjustment resulted in a refund to a

complainant of $200 on a funeral bill, and, in another case, a reduction of $1,000 on a finance company note involving a home-improvement loan.

California's Office of Consumer Counsel

The only other consumer protection agency not already discussed and not located within a state Attorney General's office is California's Office of Consumer Counsel.[3] In the words of Mrs. Helen Nelson, the California Consumer Counsel, she is the consumers' "lookout" in the market place, and the consumers' advocate before legislative and regulatory government bodies. In a sense, the California Consumer Counsel is a one-woman Massachusetts Consumer Council.

According to this office's enabling act, the Consumer Counsel must:

(1) Advise the Governor as to all matters affecting the interests of the people as consumers;

(2) Recommend to the Governor and to the California legislature the enactment of such legislation as is deemed necessary to protect and promote the interests of the people as consumers; and

(3) Make such studies as the Counsel considers necessary, or as directed by the Governor, in order to carry out the above duties;

and it may:

(1) Appear before governmental commissions, departments, and agencies to represent and be heard on behalf of consumers' interests;

(2) Cooperate and contract with public and private agencies for the obtaining of statistical surveys, printing, economic information, and such similar services as may be necessary and proper;

3. According to Mrs. Helen Nelson, California's Attorney General has created a consumer-protection agency within his office which supplements rather than duplicates her office's efforts. No information was received from the Attorney General on this program, however. For additional information on the consumer counsel program in California, see pages 165 to 167 subsequently herein.

(3) Perform such other acts as may be incidental to the exercise of her powers and functions; and

(4) Render reports on the studies instigated by herself, or ordered by the Governor, to the consumers of California.

Once appointed, the Consumer Counsel's term of office and salary are set by the Governor, who also may appoint and fix the salaries of the Counsel's assistants and employees. The statutory maximum yearly salary of the Counsel is $18,000, and the salaries of her assistants and employees, according to the enabling act, must closely conform to the salaries established by the State Personnel Board for comparable classes of positions. To assist her in her duties, the enabling law requires all state agencies, officers, and employees to cooperate with her, and allows the Governor to create advisory committees, all of which are to be under her direction, and all members of which are to receive only their actual and necessary expenses.

In her reply, Mrs. Nelson stated that the purpose of her office is "...to provide official consumer representation at the highest level of state government. It is estimated that at least 50 per cent of decisions made within government are economic decisions, directly affecting the consumer in his purchasing of goods and services. Many of the matters involved are complex and technical. Those who have an interest in these matters are usually in a position to secure technical and expert advocates to plead their cause. Consumers, for the most part, are not in a position of equal strength. Our role is to 'balance the scales,' to advocate the consumer viewpoint before those governmental bodies which have policy-making and law-making authority."

To accomplish this purpose during 1964, for example, Mrs. Nelson appeared before numerous policy and lawmaking authorities whose hearings were devoted to:

(1) Proposed rate increase for credit life insurance;

(2) Estimates of charges and notification of shipping delays by commercial household goods movers;

(3) Prominence of quantity statement on package labels;

(4) Television and radio repair services;

(5) Inspection of stuffing materials in stuffed toys;

(6) Pesticides;

(7) Qualifications of persons preparing income tax returns;

(8) Labeling of thawed meat, fish, and poultry;

(9) Lending and credit problems;

(10) Frauds and misrepresentations affecting elderly persons;

(11) Weight and labeling of bread;

(12) Food packaging practices;

(13) Automobile repair services;

(14) Mechanics' liens; and

(15) Advance notice on rate changes of public utilities.

In addition to attending these hearings, Mrs. Nelson, or a member of her staff, regularly attended meetings of the Board of Investment, the Department of Agriculture's Milk Quality Committee, and the State Welfare Board. During this same year, her office conducted studies on wage garnishment, hearing aids, pesticides, and research needs in consumer economics, and published several pamphlets and brochures for consumers.

During fiscal year 1965-66, the salaries of the officer's six employees -- Mrs. Nelson, one information officer, one field representative, and three clerical employees -- accounted for $64,722, or 72 per cent, of the office's $89,998 budget. Of the balance, operating expenses totaled $24,526, and $750 was budgeted for equipment. Appropriations and authorized positions since the office was created are:

| Fiscal Year | Amount Appropriated | Positions Authorized | | |
|---|---|---|---|---|
| | | Professional | Clerical | Total |
| 1959-60 | $ 45,000 | 3 | 2.8 | 5.8 |
| 1960-61 | 64,034 | 3 | 3 | 6 |
| 1961-62 | 99,232 | 4 | 3.9 | 7.9 |
| 1962-63 | 102,544 | 4 | 3.9 | 7.9 |
| 1963-64 | 122,486 | 4 | 4.9 | 8.9 |
| 1964-65 | 122,954 | 4 | 4.9 | 8.9 |
| 1965-66 | 89,998 | 3 | 3 | 6 |

The California Consumer Counsel is also assisted by a program advisory committee which usually consists of 15 members. These 15 men and women represent a cross-section of consumer interests and geographical locations.

Consumer Protection Programs Under Office of Attorney General

In at least ten states, a consumer protection agency is found within the Attorney General's office. These agencies are known by many names, reflecting their purposes and the choice of descriptvie words in the states' administrative codes, and generally were created to give increased attention to consumer protection needs and wants. This increased attention, however, has been caused by several developments.

In at least seven states, the consumer protection agencies were indirectly created by legislative enactment. In these states, the legislature adopted laws assigning the Attorney General certain consumer protection activities, and the Attorney General assigned, by administrative order, several attorneys and, perhaps, several clerical employees, to devote their full-time efforts to these activities. New Jersey's Consumer Frauds Division is an agency that may be cited to exemplify this type of creation. In 1960 New Jersey's legislature enacted a statute pertaining to consumer fraud and unlawful credit practices. This statute gave to the New Jersey Attorney General certain enforcement powers to act against certain types of consumer frauds, powers that previously had been the powers of local prosecuting attorneys only. The Attorney General, in turn, ordered the creation of a special force within his office, known as the Consumer Fraud Bureau, to carry out the intent of this law.

Three states have consumer protection agencies within the Attorney General's office that were created either by the Attorney General's reaction to the growing number of complaints received by him relative to consumer fraud or by requests from external, non-legislative officials. Possibly both causes were present to some degree in these states. These agencies act as complaint centers to which consumers' complaints are addressed and from which they are referred to the proper local law enforcement agency, and they serve to coordinate consumer protection activities. In this latter capacity, the Attorneys General disseminate consumer fraud information either to the public or to local law enforcement agencies, and coordinate the local efforts to prevent and abate consumer fraud. For example, the Michigan Attorney General has created a "hot line" alerting network for communications between voluntary local action forces being set up in 16 key counties to fight consumer frauds. Fast-breaking intelligence information about consumer fraud activities is called in to a special telephone number in the Attorney General's office and is relayed immediately to all other county action units. This network is intended to prevent hit-and-run operations used by several consumer fraud operators. If persons in one county are victimized, it is anticipated that at least the authorities in other counties will learn of the operation in time to take precautionary action.

The Attorney General's authority to initiate such steps without specific legislative approval is found in the common law.

According to Corpus Juris Secundum, the powers and duties of Attorneys General are primarily executive and administrative, and consist in those powers and duties expressly or impliedly conferred by constitutional or statutory provisions together with, in the absence of express exclusion thereof, the powers attached to the office at common law:

> The office of attorney general has existed from an early period, both in England and in this country, and is vested by the common law with a great variety of duties in the administration of the government. The duties are so numerous and varied that it has not been the policy of the legislatures of the states of this country to attempt specifically to enumerate them; and where the question has come up for consideration, it is generally held that the office is clothed, in addition to the duties expressly defined by statute, with all the power pertaining thereto under the common law....As the chief law officer of the state, the attorney general may, in the absence of some express legislative restriction to the contrary, exercise all such power and authority as public interests may from time to time require. (7 C.J.S. 1222 and 1223)

This conclusion is apparently valid for Colorado, also. In one of the few Colorado Supreme Court cases bearing on this subject (88 Colo. 331), the court ruled that the Attorney General has only such duties and powers as are conferred by law, the term "law" including both statutory and common law, and that whatever duties the Attorney General had at the common law he still may have, except insofar as they have been taken away by legislative enactment.

It appears from the information supplied by the Attorneys General that the growing amount of consumer fraud and the growing demand of consumers for its curtailment, if not abatement, are causes for the enactment of consumer fraud legislation. State legislative decisions that there exists a need for immediate and centrally-administered remedies perhaps is why the administration of these laws has been assigned to the Attorneys General, the states' chief law enforcement officers. Mrs. Esther Peterson, Special Assistant to the President on Consumer Affairs, had this to say about the need for immediate remedies at the 1965 National Association of Attorneys General Conference:

> As you know, most states have statutes against consumer fraud. Unfortunately, however, the mere existence of these statutes does not meet the problem. Why? The district attorney is often reluctant to prosecute. A criminal case is a tremendously burdensome and time-consuming effort. The burden of proof must be beyond a reasonable doubt. In order to get a good case for prosecution, the state must permit the

> defendant to continue in operation long enough for a good file of complaints to be built up against him. Thus, many more people are allowed to be defrauded so that a good case can be presented. In many cases, the perpetrator flees the country or the state before action is taken. And even if the district attorney can be persuaded to prosecute, the judge may merely put the defendant on probation since his crime is not one of violence, but involves commercial transactions. Rarely is there a chance for restitution.
>
> The result is an ineffective remedy to protect the public in these cases. In essence, the problem is one of providing victims of fraud with an adequate remedy.[4]

Pennsylvania Attorney General Alessandroni had this to say about centrally-administered remedies during the same conference;

> Even without legislation there is a great deal Attorneys General can do as a part of our basic obligations. It seems to me that the very least we ought to do is to exchange information. If a particular fraud has been a part of the Pennsylvania scene, I ought to make the information available to my colleagues. If that scheme moves from Pennsylvania to another state as pressure is brought in Pennsylvania, isn't the public at least entitled to know in advance the kinds of schemes that are being perpetrated? Also shouldn't the federal government at the very least offer a central depository into which this information could be sent? In turn, it should be transmitted not only to Attorneys General but to district attorneys and business interests of each community as well.
>
> This advance information alone, without more, will do much to stop and prevent fraudulent activities. There is no other single group of state officials who have more experience in this field than Attorneys General, even though they may not have specific legislation on this subject.
>
> The common law responsibilities and powers which Louis Lefkowitz has talked about with our responsibilities under _parens patriae_, make it obligatory

4. _Proceedings of the 59th Annual Meeting_, National Association of Attorneys General, p. 46.

that we give every thought and consideration in our own shops to this problem.

Shouldn't we at the very least assign this job to some deputy to seek out all that is being done in other states to make a determination as to whether (a) sufficient (job) is being done in our own state?.

I think that increased concern with consumer problems will be upon us as certain as day follows night. The point at which it reaches legislative effort is merely a question of time.

As this atmosphere builds, wouldn't it be better if it, too, occurs in the shops of the chief law officer of each state where with the mature judgment we can lend our best experience gathered from like activities, rather than wait for the emotional screaming headlines that will demand immediate legislation? Under these circumstances, the legislation might be quickly drafted without due thought. It could hurt legitimate business and by hurting business also hurt the consumer.

There is a way to do this efficiently and properly. The business community and the chambers of commerce must be a part of it, but we should supply the leadership.

I suggest that the Attorney General and his staff can perform this function better than any other group. The requests of the Federal Trade Commission for limited funds to make their information available to the Attorneys General and to other law enforcement officers is a step in the right direction.[5]

Since an Attorney General can direct that his office act as a complaint center, and since the legislature can direct him to enforce a consumer law without the Attorney General establishing a consumer protection agency, it is not known how many states, in addition to the ten included herein, have consumer protection agencies within the office of the Attorney General. Colorado's Attorney General, for example, performs some of the functions that are performed by Attorneys General who have consumer protection offices within their offices, but Colorado is not listed in the usual compilation of states having consumer fraud agencies within the office of Attorney General.

5. Ibid., p. 49.

Where available, a summary of the powers, duties, activities, budget, etc., of Attorney General consumer protection agencies is contained in the following paragraphs, based on information supplied by the Attorney General's office in these ten states.

Hawaii. The Fair Business Practices Division was created in October, 1964, within the Department of the Attorney General by administrative action. The division's objective is to provide protection to the consuming public as well as to the honest businessmen from unscrupulous businessmen who resort to unfair and deceptive business practices in dealing with the consumer. The division consists of two sections, antitrust and consumer protection.

The division is primarily concerned with the enforcement of three laws -- the state's false advertising statutes and two 1965 acts relating to antitrust and consumer protection:

A. False Advertising. Hawaii's false advertising statute declares that certain advertising practices, such as bait and switch, false and misleading, and false and misleading comparative price advertising, are unlawful, and provides three approaches to follow in order to abate the unlawful practices: criminal actions, injunctive actions, and acceptances of written assurances of discontinuance. With respect to a criminal action, a defendant convicted of violating the false advertising laws can be fined in an amount not exceeding $500, imprisoned for not more than three months, or fined and imprisoned. Injunctive actions can be sought by persons, firms, private corporations, municipal or other public corporations, trade associations, county attorneys, and, since 1963, the Attorney General. The third approach was authorized by the 1963 legislature, and empowers the Attorney General and county attorneys to accept written assurances of discontinuance which are offered by the persons against whom the violations are alleged. An assurance of discontinuance must be signed by the alleged violator, must contain a statement describing the acts or practices for which it is being given and the specific sections of the law prohibiting the acts or practices, and must be filed with the clerk of the circuit court of the county in which the alleged violator resides or has his principal place of business. The statute also states that a violation of the assurance constitutes a rebuttable presumption of a violation of the sections designated in the assurance.

B. Consumer Counsel Designation. One of the 1965 acts designates the Attorney General as the Consumer Counsel for the state and requires him to:

(1) Represent and protect the state, the respective counties, and the general public as consumers;

(2) Investigate reported or suspected violations of laws and rules and regulations for the purpose of consumer protection; and

(3) Enforce the consumer-protection laws, rules and regulations.

C. Antitrust. The second 1965 act amended Hawaii's existing antitrust laws by the addition of two new sections. One section declares that unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful, and the second section states that it is the intent of the legislature that, in construing the first section, the courts will be guided by the interpretation given by the Federal Trade Commission and the federal courts to a similar section of the Federal Trade Commission Act. (Hawaii's unfair and deceptive practices act is substantially the same as the F.T.C. Act.)

The reason given for this antitrust law amendment is that it gives the Attorney General broad powers in investigating unfair and deceptive acts and practices. This act is enforced in the following manner:

(1) In enforcing the provisions of the unfair and deceptive practices act, substantially all of the matters reviewed come to the Attorney General's attention by way of complaints from the consuming public. Complaints have also been referred to this office by the Legal Aid Society and the Better Business Bureau.

(2) After this office has been made aware of an alleged unlawful practice, it conducts a preliminary investigation and if, after that investigation, it is found that further information is necessary for a final determination of the legality of the reported practice, an investigative demand, pursuant to the investigative powers granted to the Attorney General, is issued and served upon the business concern against which the complaint has been made.

(3) If, after reviewing the material, it is determined that a violation has occurred, this office may bring an injunctive action against that business concern or, in the alternative, a consent decree arrangement may be entered into. (In those situations, whether involving the false advertising statute or the unfair and deceptive business practices act, wherein the gravity of the problem is minimal, a less formal solution to the problem is worked out.)

The division's head is, of course, the Attorney General, but the administrative responsibilities have been assigned to a deputy attorney general who has been designated the Administrative Assistant in charge of the Fair Business Practices Division. This deputy, who is assisted by one law clerk, also has the working

responsibility for the Antitrust Section, and two other deputies have been assigned to the Consumer Protection Section.

Kansas. The Consumer Protection Unit was organized under the direction of the Kansas Attorney General in June, 1962, because of the growing problem in the area of consumer fraud in the state. The purpose of this unit is to prevent, rather than prosecute, fraud by assisting local law enforcement agencies and legitimate businessmen of the community in combating the perpetration of various types of frauds on the people of Kansas.

Among the unit's activities are investigation and the acquisition and dissemination of information pertaining to consumer frauds. Specifically, the unit acts as a clearing house for consumer complaints from all over the state. (The unit is not specifically authorized to prosecute consumer fraud, although it has common law and statutory authority to investigate any criminal offense and to consult with and advise county attorneys.) It also administers a program of public education through the release of consumer fraud bulletins which are delivered to the various newspapers, radio and television stations, and chambers of commerce throughout the state. The unit requests a wide dissemination of the material for greater coverage of the general public, and provides speakers for service and social organizations to enlighten the citizens on the types, methods, scope, and character of the fraudulent schemer. The unit attempts to familiarize the public with activities of the door-to-door salesmen, bait advertising, and the sample survey methods of selling.

At the present time, the budget for this unit is approximately $8,500 annually. This figure includes the cost of obtaining and maintaining a state automobile. One investigator on the Attorney General's staff is assigned to investigate consumer fraud, and he works with an assistant attorney general who acts in an advisory capacity. The secretarial staff of the Attorney General is utilized, and the workload can be handled adequately without additional expense under this arrangement.

Michigan. In 1960, the Consumer Protection Division was created within the office of the Michigan Attorney General by administrative action. Among the reported activities of the division are the following:

(1) It serves as a clearing house for information gathered from all over the state concerning improper business activities;

(2) It consults with and advises both private and prosecuting attorneys concerning legal theories and approaches that may be used in dealing with business firms that have improper business practices;

(3) It takes every possible opportunity to inform consumers of such practices and what they can do to protect themselves. A biweekly news release is sent to newspapers and radio and television stations for distribution. Moreover, the division has a "hot-line" altering network for communications between voluntary local action forces being set up in several of Michigan's counties to fight consumer fraud. Fast-breaking intelligence information about consumer fraud activities will be called in to a special telephone number in the Attorney General's office and will be relayed immediately to all other county action groups. This "hot-line" program is intended to prevent hit-and-run operations utilized by several consumer fraud operations. If persons in one county are victimized, at least the authorities in other counties will learn of the operation in time to take necessary measures; and

(4) It requests explanations from businesses accused of unethical business practices. (The division does not have the authority to force a settlement.)

During the preceding year, the division processed 1,054 complaints. Of this number, 250 were settled satisfactorily, but, occassionally, the complaints resulted in legal action.

The division does not operate on a separate budget; its budget is a part of the over-all budget of the Attorney General's office. However, the annual salaries of the division's employees -- one attorney, one field representative, and one full-time and one part-time secretary -- currently amount to $31,280.

Missouri. In February of 1962, the Missouri Attorney General created the Consumer Protection Division within his office. The principal reason for this action was to assist the many persons who were writing the Attorney General to complain of deceptive selling practices of some retailers. (In 1965, H.B. 51, patterned after the present Illinois Consumer Protection Act, died in the Senate. This bill, had it been adopted, would have empowered the Attorney General to take direct legal action in the absence of clearly criminal activity by (1) authorizing the Attorney General to conduct formal investigations of deceptive sales practices and, where appropriate, to seek injunctions in circuit court to halt such practices, and (2) empowering the Attorney General under certain circumstances to seek court orders compelling restitution to defrauded buyers.) The division presently has no specific statutory power and authority.

The purposes of the division are:

(1) To screen complaints for possible violations of criminal laws, and, where indicated, to bring

such matters to the attention of the prosecuting attorney concerned or other law enforcement agencies;

(2) To maintain permanent files of complaints, listings of sellers who are subject of complaints, and to record the disposition of such complaints;

(3) To promote amicable settlement of disputes between buyers and sellers;

(4) To publicize matters relating to consumer frauds, thereby warning the public of such practices; and

(5) To cooperate with similar agencies of other states and the federal government in a free exchange of information relating to consumer matters.

The activities of the division include calling attention to businessmen whose practices are the subject of written complaints sent to the Attorney General, and reporting known criminal activity to the prosecuting attorney of the county in which the violations have occurred, since the commencement of criminal prosecution is the exclusive prerogative of the local prosecuting attorney in Missouri.

New Jersey. New Jersey's Consumer Fraud Bureau was created in 1960 within the Department of Law and Public Safety by the Attorney General, following the enactment of a consumer fraud law which authorized the Attorney General to take certain direct action in cases of consumer fraud. Both the law and the bureau are reported to have resulted from the complaints received by members of the legislature, the Attorney General, the Governor, the Department of Banking and Insurance, and others, pertaining to transactions involving home repairs and automobiles.

Essentially, the activities of the bureau center on the administration and enforcement of the state's consumer fraud law. Since 1960, the bureau reports, it has been able to assist consumers via refunds and cancelled and fulfilled contracts in the approximate amount of $1,700,000.

Three deputy attorney generals, five stenographers and typists, and one investigator comprise the bureau's staff. Approximately $70,000 per year is spent for their services, and this amount is allocated at an average of $11,500 for each of the three deputy attorney generals, $7,000 for the head clerk, $8,500 for the one investigator, and $4,000 for each of the four stenographers and typists. Other expenses are not available as these are included in the Attorney General's general administrative expenses. Annual expenses, including salary expenses, have risen, according to the bureau, and this has been due to the need for additional office space and personnel.

New Mexico. New Mexico's Attorney General created the Consumer Fraud Section within his office by administrative action in 1965, following the enactment of several consumer protection laws. The 1965 legislature refused to create the section by statute, but appropriated an additional $7,000 to the Attorney General's office so that he could hire an additional employee to assist in the administration of these laws.

The new section is in charge of enforcing these 1965 laws, two of which pertain to false advertising and retail installment sales, and these laws empower the Attorney General to meditate, conciliate, and, if necessary, commence civil actions against those whose acts have been called to the attention of the Attorney General by consumer complaints.[6]

New York. New York's Bureau of Consumer Frauds and Protection was established within the Department of Law in 1957 by the state's Attorney General. The reason reported for its creation was the need to supply the defrauded consumer with some governmental agency that would represent the public as a whole. The intent of the bureau is to operate in general areas of consumer problems rather than become involved in individual civil actions for which private attorneys would be used.

According to the bureau's 1964 annual report, its work involves mediation, education, legislation, and litigation. The bureau drafts legislation to protect the consuming public and the legitimate business community, where activities cannot be adequately controlled by self-policing or are prone to continuing fraudulent practices, and the bureau instigates legal proceedings where fraudulent and illegal activities are such that the best interests of the public would be served by court action.

At least six bodies of codified law -- business corporation, executive, general business, personal property, penal, and agriculture and markets codes -- provide the statutory provisions from which the bureau receives the authority to engage in its activities. During 1964, the bureau's office was visited by 11,800 members of the public, and its staff opened more than 25,000 pieces of mail and received and made over 60,000 phone calls. The bureau opened 10,862 files, closed 10,043, and carried 2,204 files over into 1965. In cash, goods, and services, $1,237,468 was returned to consumers as a result of the bureau's mediative and court actions.

The bureau's 1964 annual report lists several cases that its authors believe illustrate the bureau's activities. Among these are the following:

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6. For additional information on New Mexico's program, see pages 167 to 168 subsequently herein.

(1) A Supreme Court order dissolved a Long Island Corporation which sold hundreds of homeowners a central vacuum cleaning system through a deceptive referral sales plan. The order also provided for a $25,000 escrow fund for the adjustments of complaints of the company's customers. Security Advertising Company, Inc., consented to the entry of judgment, and agreed to pay $2,000 as costs.

(2) A Westchester firm which allegedly attracted customers through advertised sales of "repossessed" sewing machines and then disparaged these machines in an effort to sell other models agreed to discontinue this bait and switch sales approach by entering into an assurance of discontinuance. The firm paid $500 in costs.

(3) A year-long investigation was brought to a conclusion after a protracted Supreme Court trial, with the entry of a judgment against several individuals and corporations selling the Compact vacuum cleaner through the referral selling scheme. Evidence adduced revealed that more than 500 customers had been victims of high pressure sales tactics, many in the lower income brackets and with English language difficulties. The respondent appealed from this sweeping injunction and the Appellate Division, First Department, modified the judgment on new findings and directed the submission of an order based on their findings. The Attorney General has submitted such an order which is before the court.

North Dakota. During the 1965 session, two laws were enacted by the North Dakota Legislature -- one law pertained to consumer fraud and unlawful credit practices and the other required the Attorney General's Criminal Identification Bureau to act as a consumer fraud bureau. These laws, according to the counsel for the Attorney General's Consumer Fraud Division, resulted from the various complaints received by the Attorney General from private citizens, and were concerned with sales of hearing aids, sewing machines, vacuum cleaners, siding, and grocery and correspondence school contracts. The majority of these cases involved techniques by salesmen calling on the consumer at his residence. As a result of this consumer fraud act, the Attorney General established the Consumer Fraud Division in his office.

The North Dakota consumer fraud act confers upon the state's Attorney General certain powers to abate an unlawful practice and defines an unlawful practice as:

> The act, use, or employment by any person of any deceptive act or practice, fraud, false

> pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been mislead, deceived, or damaged thereby,...

The words "advertisement," "merchandise," "person," and "sale" used in this definition are defined in another section of the act, and owners and publishers of newspapers, magazines, etc., and owners and operators of radio and television stations are excluded from the act's scope in a third section.

The consumer fraud act, following the act's definition sections, confers upon the Attorney General the following powers:

A. Investigatory Powers. When it appears that a person is engaging in certain practices that are deemed unlawful by the act, or in other sections, or when it is believed that an investigation should be made to ascertain whether a person in fact is, has, or is about to engage in these unlawful acts, the Attorney General may:

(1) Require such person to file on such forms as he prescribes a statement or report in writing, under oath or otherwise, as to all the facts and circumstances concerning the sale or advertisement of merchandise by such person, and such other data and information as he may deem necessary;

(2) Examine under oath any person in connection with the sale or advertisement of any merchandise;

(3) Examine any merchandise or sample thereof, record, book, document, account, or paper as he may deem necessary; and

(4) Pursuant to an order of a district court, impound any record, book, document, account, paper, or sample of merchandise material to such practice and retain the same in his possession until the completion of all proceedings undertaken under this section or in the courts.

To assist the Attorney General in the exercise of these powers, the law also empowers him to issue subpoenas, administer oaths and affirmations, conduct hearings, prescribe forms, and promulgate rules and regulations.

Upon failure or refusal of any person to file any statement or report, or disobey any subpoena issued by the Attorney General, and until the person files the statement or obeys the subpoena, the Attorney General may request a district court, after notice to the person, to:

(1) Grant injunctive relief, restraining the sale or advertisement of any merchandise by such person;

(2) Vacate, annul, or suspend the corporate charter of a corporation created by or under the laws of North Dakota, or revoke or suspend the certificate of authority to do business in North Dakota of a foreign corporation, or revoke or suspend any other licenses, permits, or certificates issued to such person which are used to further the allegedly unlawful practice; or

(3) Grant such other relief as may be required.

B. Abatement Powers. In addition to his investigatory powers, the Attorney General, whenever it appears to him that a person has engaged in or is engaging in any practice declared to be unlawful by this act or related acts, may seek and obtain an injunction in a district court prohibiting the person from continuing such practices or engaging therein or doing any acts in furtherance thereof after appropriate notice to the person. If it appears to the Attorney General that the person is about to conceal his assets or his person or leave the state, he may apply to the district court for an order appointing a receiver of the person's assets.

The 1965 Criminal Identification Bureau Act creates a bureau by this name within the Attorney General's office, and directs this bureau also to act as a consumer fraud bureau. This bureau is charged with the duties of making investigations, and maintaining facilities for filing reports, examining persons and merchandise, storing impounded books, records, accounts, papers, and samples of such merchandise.

The 1965 legislature appropriated $21,000 to provide for an attorney to handle consumer fraud, an agent of the crime bureau, and a secretary, but it was reported that this amount is not sufficient to cover costs for the biennium for which it was appropriated. The counsel for the division handles matters for several other state departments in addition to his consumer fraud duties.

Ohio. In January of 1963, the Ohio Attorney General created the Consumer Frauds and Crimes Section within his office. One of the primary reasons leading to this administrative action was the publication of a study that showed Ohioans were being bilked of an estimated annual $300 million by sharp operators.

The purpose of the section is to function as a coordinating force and clearing house to assist state and local governmental agencies in combating fraudulent practices in advertising, sales, and related fields. Among the several activities of the section are the following:

(1) A bulletin service is maintained to promptly disseminate information to governmental agencies and

other groups and associations, including the prosecuting attorneys, sheriffs, city solicitors, chiefs of police, Ohio State Highway Patrol, postal inspectors, chambers of commerce, and better business bureaus. Subjects of recently-printed bulletins include bait advertising and solicitation, distinction between civil and criminal actions, Blind Associates, Inc., door-to-door solicitations, magazine salesmen, free home inspections, credit cards and the larceny-by-trick statute, telephone communications, "free" real estate promotions, and signing of papers;

(2) Communications have been instituted between the section and offices of Attorneys General in other states, the Federal Trade Commission, U. S. Postal Authorities, and other sources for information concerning fraudulent matters;

(3) Continual examination of ways in which government and business can work together in the area of consumer frauds to protect the citizens;

(4) Encouragement of the focusing of attention on the consumer's responsibility to help himself, through continuing educational efforts; and

(5) Assisting the policing agencies in Ohio that are authorized by law to carry on the responsibilities of investigation and prosecution.

The section currently is operating on an annual appropriation of $55,000. This amount includes the services of a section chief, who is responsible to the First Assistant Attorney General; two full-time investigators; one secretary; and one legal aide. Other personnel available to the section when needed are assistant attorney generals and field investigators. All activities are carried on in the section's only office, located in Columbus.

Washington. The Consumer Protection Division in Washington State is an outgrowth of a 33-man consumer council composed of doctors, teachers, better business bureau managers, businessmen, etc., which made several recommendations to the 1961 Washington legislature. These recommendations, including the suggestion to enact a consumer protection and a false advertising law, were adopted in 1961, and the council was abolished. Upon its abolishment, Washington's Attorney General created the Consumer Protection Division within his office.

In a reply to an inquiry on behalf of the Committee on Consumer Problems, Mr. Donald Navoni, chief of the division, submitted a paper which he had read at the 1965 annual meeting of the Western Conference of the Council of State Governments. This paper

represents the most exhaustive answer to the committee's inquiry concerning activities, duties, expenses, etc., of consumer protection agencies within offices of Attorneys General, and a major portion of this paper follows:

"We now turn our attention to a brief discussion of consumer protection laws in the State of Washington.

"A. Consumer Protection Act of 1961: RCW 19.86.010 et seq. There are roughly three categories of conduct which this act proscribes.

"First, Section .020 deals with the same types of business activity as are covered by Section 5 of the Federal Trade Commission Act and reads as follows: 'Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.' This deliberately broad language is intended to embrace a persistent epidemic of practices which, under the guise of legitimate commerce, take an unfair advantage of competitors and consumers alike and range from the use of over-zealous selling techniques to outright fraud and swindle.

"The second category comprises principally anti-competitive acts which are made illegal per se. These include acts which because of their pernicious effect on competition and lack of any redeeming virtue are made illegal regardless of their actual impact upon competition. This category includes contracts, combinations and conspiracies in restraint of trade and monopolization or attempts to monopolize and is covered in Sections .030 and .040 of the act modeled after Sections I and II of the Sherman Act.

"The third category, Sections .050 and .060 deals with conduct which experience has indicated, if left to flourish, eventually will result in the restraint or elimination of competition. These two sections prohibit the acquisition of stock of one corporation by another and exclusive dealing contracts if, and only if, such acquisitions and contracts may result in a restraint of trade or commerce or a substantial lessening of competition. The statutory language is based on Sections 3 and 7 of the Clayton Act.

"The act is civil in nature, not criminal, consistent with its purpose of fostering public protection rather than punishing for violations. However, in the case of outright swindles where public protection would dictate the necessity of punishment, the prosecuting attorneys will contintinue to bring criminal proceedings.

"The enforcement tools available to the Attorney General are these:

"(1) Injunction.

"(2) Assurance of Discontinuance -- a written agreement

to discontinue practices deemed to be in violation, in lieu of formal law suits, and filed in the superior court.

"(3) Civil Investigative Demand -- authorizes the Attorney General to compel production of documentary material during the precomplaint stage of antitrust investigations.

"(4) Civil Penalty -- not more than $25,000 for violation of an injunction issued under the act or for violation of Sections .030 and .040 of the act.

"(5) Corporate Dissolution -- corporate capital punishment -- upon petition by the Attorney General for violation of any injunction issued pursuant to the act or for violation of Sections .030 or .040.

"B. The False Advertising Statute of 1961: RCE 9.050 et seq. This statute prohibits in substance false, misleading or deceptive advertising, no matter what form it takes, where the advertiser has knowledge of the facts which render the advertising false, deceptive or misleading. A specific exemption is provided radio or television broadcasters, publishers, printers, and distributors, etc., who publish or distribute advertising in good faith without knowledge of any false, misleading or deceptive character.

"The enforcement tools include injunction, assurance of discontinuance, and a civil penalty up to $5,000 for violation of any order or injunction issued under the act.

"C. Installment Credit Disclosure Act of 1963: RCW 63.14. 010 et seq. This is essentially a 'full disclosure' law which prohibits hidden charges and requires that all retail installment contracts and retail charge agreements set forth fully, fairly and completely, all the terms of the agreement or contract in a manner which readily can be understood by the average buyer. It is not a regulatory law as such, and places no limit on the amount or rate of service charge which may be made on a retail installment sale. The act also outlaws fine print, the execution of contracts in blank or containing blank spaces, and provides that customers shall obtain a copy of the contract.

"The remedies include, injunctive relief, assurance of discontinuance, civil penalty up to $1,000 for violation of an injunction, or intential violation of the act, and a novel, self-executing provision in Section .180 which prevents a noncomplying seller from recovery of the service charge, fees, or any related delinquency or collection charges.

"Attorney General O'Connell personally conducted a series of trade conferences throughout the State of Washington with affected industry members in order to facilitate adaptation of their contracts in conformity with the new law. An analysis of the substantive provisions of this act was provided interested industry members.

"Any law enforcement program in the specialized area of consumer protection or trade regulation necessarily involves various types of activity. We have divided our functions into the following areas:

"1. Complaint Processing. Over 6,000 complaints have been registered, investigated and incorporated into our permanent files. Each is acknowledged and a summary of pertinent facts is furnished the firm complainted against, usually by letter, in order to obtain their views of the transaction. Such informal processing often provides firms with a greater awareness of their salesmen's conduct or misconduct, stimulates self-regulation, and often brings about an adjustment to the injured complainant, although the Attorney General does not represent complainants in their private capacity. It is possible to determine a growing pattern of misconduct immediately by a quick check of our alphabetical files. This function alone is responsible for contract cancellations and refunds amounting to well over a million dollars and has put an early end to hundreds of unlawful practices.

"2. Investigative Section. This section is responsible for pre-litigation investigation of those firms where a pattern of misconduct has developed indicating a breakdown of self-regulation and in which the public interest is best served by commencing civil injunctive proceedings under the statutes. Investigations often are initiated by the Division prior to the receipt of complaints, particularly where leads have been provided by other law enforcement agencies, competitors, Better Business Bureaus, or Chambers of Commerce.

"3. Litigation -- Formal and Informal. Formal injunctive proceedings are instituted within the framework of statutory authority where investigation reveals such action is appropriate. Informal assurances of discontinuance are executed by firms, accepted by the Attorney General and filed in superior court in lieu of formal injunctive proceedings where investigation indicates such action is sufficiently effective to prevent further abuses, and is in the public interest.

"4. Legislation. Where activities cannot be controlled adequately by self-policing and may escape the purview of existing statutes, proposed legislation is drafted and recommended by the Attorney General to protect the consuming public and the legitimate business community. A recent example is the Attorney General's legislative recommendation requiring the registration and reporting of charitable fund solicitations and a public register and periodic reporting system for all charitable trusts. These measures failed of passage in the 1965 session of the legislature, and it is planned to recommend them in the next legislative session.

"5. Consumer Education. An important responsibility of making known to the public the many sophisticated techniques of present-day consumer fraud in order that they may be better able to protect themselves.

"As the result of complaints filed with the Division, which indicated a pattern of misconduct, and the resulting investigative reports, formal injunctive proceedings were brought to restrain unfair or deceptive trade practices in such fields as home improvement, aluminum siding, used automobiles, home intercoms, and fire alarms, chinchilla breeding stock promotions, freezer food plans and direct sales of sewing machines, vacuum cleaners and related merchandise. Less formal assurances of discontinuance were entered in the superior courts of the state, attacking such conduct as misrepresentation, deceiptive trade practices, bait and switch methods of sale, false comparative pricing, phony prizes or contests, deceptive guarantees, false advertising, and unfair methods of competition. These practices in addition to the trade areas mentioned were related to correspondence and training schools, magazine subscription solicitations, television repairs, phony "trade" publications, wrist watches and jewelry.

"Apart from the formal actions outlined above, all of the complaints registered with the Division in the last biennium were closed in the following manner: Approximately 60% were closed satisfactorily in informal adjustment conferences, wherein the business concern is advised of the trade practice investigated even though it may be an isolated or a single transaction. Investigation revealed that 8% of the complaints should be closed with no action. This decision usually is made when it is determined the matter was essentially a private controversy, not involved in 'trade or commerce' or was otherwise exempt from the terms of the statute or the matter did not indicate a violation of the statutes.

"Following are three examples of pleadings, (which are publice record) and representative of our formal enforcement activity. First is a final judgment entered upon stipulation of the parties against a large home improvement concern, chartered in California, formerly headquartered in Portland, Oregon and which operated in 22 counties in the State of Washington simultaneously. You will note that the permanent injunction runs against individual defendants who were joined because of their alleged involvement in the direction, management and control of the acts and practices complained against. Also significant is Section V, which provides post judgment discovery to the Attorney General in order to facilitate compliance checking with the injunctive provisions. The Attorney General recovered investigative costs in the amount of $1,500.

"The most recent complaint filed by Attorney General O'Connell involves a used automobile dealer engaged in the "system selling" method of operation. This complaint is significant in that it contains 27 allegations of the three statutes discussed above.

"Third, an assurance of discontinuance, which was filed in Thurston County Superior Court, concerns a firm engaged in the sale of freezers and freezer-food plans. The assurance provides the legal description of respondents, identifies the type of business in which they engaged, their principal place of business,

and the specific types of conduct they make assurance will be discontinued. The agreement specifically recites that it is executed for settlement purposes only and does not constitute admission by respondents that they have violated the law.

"While the Division has been responsible for refunds and contract cancellation as described above, more importantly we have been able to put an early end to consumer rackets which, if allowed to run unchecked, would have cost our citizens several millions of dollars.

"Consumer education is based upon the premise that the well informed consumer needs the least government protection. The consumer, who is really the first line of defense against fraudulent and deceptive tactics in the arena of the market-place, should be armed at least with knowledge and information. His "weapons" can be forged from the art and science of consumer education rather than from the hard and costly lessons learned as a victim of consumer fraud.

"At the outset, it should be stated that there is a wide range of business conduct which, while not in violation of any particular fraud, usury or consumer protection statutes, is nevertheless overreaching and works serious hardship upon the uninformed members of the purchasing public. One such example includes the practices by certain second mortgage brokers who, after the initial agreement is executed, tack on 'finder's fees,' 'escrow fees,' 'appraisal fees,' 'investigative fees,' etc., and fail to provide borrowers with a copy. Also, consumers are sadly lacking in the knowledge required to compute interest or to distinguish between simple annual interest, add-on interest or discount interest. In Washington it seems that everyone except the consumer realizes that conditional sale contracts have been held not to come within the purview of our usury statute which prescribes a maximum of 12% interest per annum.

"I wonder just how many consumers realize that 'documentary and brokerage fees' on the purchase of a used automobile are often just another source of income to the seller, or that 'business and occupation tax' appearing on retail sales contracts fall in the same category, and that the taxing statute expressly prohibits the retail seller from passing along the tax in that manner.

"We might consider the needs, importance and effects of consumer education:

"(1) Provides increased self-protection to the consumer. The consumer is less likely to be deceived when he is informed of the techniques of a particular fraud or business gimmick. The consumer, for example, who realizes that the $3.00 per month TV rental offer or home service call is impossible and is merely bait would not be taken in by such offers.

"(2) Purchaser receives more value for dollars spent. The informed consumer who realizes that the 'free' gifts are really

included in the total purchase price will spend his time shopping for merchandise instead of prizes; or that the higher priced of the double tickets in certain lines of merchandise are fictitious to ellustrate savings which are nver realized, will be more apt to shop comparatively to determine the best price.

"(3) Warns fraudulent practitioners. When it becomes known that the Attorney General takes legal action against certain types of business conduct, a deterrent effect results throughout the particular industry. In 1961 it was estimated that $11 million annually were taken from victims of consumer fraud in Washington State. Today's estimates are closer to $3 million, which illustrates the valuable deterrent effect of a vigorous law enforcement program.

"(4) Protection of the legitimate merchants from unfair competitors and unfair methods of competition.

"(5) Promotes truth in advertising and stimulates improved self-regulation.

"The last two effects are, of course, somewhat less direct but follow as a necessary consequence.

"We turn now to sources of information and a partial listing follows:

"(1) Business-originated: (a) Fact sheets, bulletins and pamphlets published by the national and local Better Business Bureaus throughout the United States. (b) Trade association publications. (c) Publication of business of business and professional clubs and societies and Chambers of Commerce.

"(2) Government-originated: (a) Departments of Agriculture, Commerce, Health, Education and Welfare, Interior, Justice, Labor, etc., all publish numerous bulletins and reports of great interest and benefit to the consumer. (b) Enforcement news releases from the Post Office Department, Federal Trade Commission, United States Securities and Exchange Commission, Federal Bureau of Investigation, and Department of Justice. (c) Publications from corresponding government departments at the state and local level.

"(3) Private consumer publications: -- these are too numerous to identify but they include Consumers' Bulletin and Consumers' Report which deal primarily with comparative quality in competing lines of merchandise.

"Turning to some of our efforts in the field of consumer attention, your attention is invited to the pamphlet entitled "A Guide to Consumer Protection" published by Attorney General John O'Connell. Over 60,000 of these have been distributed throughout the state by business firms, banks, industry, labor unions, trade associations, Chambers of Commerce and Better Business Bureaus.

Nearly every one of the complaints registered in our Division involved a failure to observe No. 1 which provides 'Never sign anything you have not read and understood.'

"Additional types of consumer education include news releases, trade conferences, speaking engagements by the Attorney General and his staff before Kiwanis, Rotary, PTA's, professional and commercial clubs and societies, high schools and universities.

"Recently concluded was a series of 135 three-minute spot radio presentations in a program called 'Con Man Out!' which appeared over KVI radio in Seattle and throughout the state in cooperation with local stations. We have participated in the preparation of several 30-minute documentaries including out-of-state swindles, phony correspondence and training schools and used car rackets. We have had much success in reaching a particular segment of the purchasing public by means of a comic strip which has been carried in one of the prominent labor papers.

"Our most rewarding experiences have come from the Attorney General's high school appearances. At least once monthly he appears at one of the public or appears at one of the public or private high schools throughout the state, usually before a combined assembly of history, civics, home economic, contemporary affairs and business law classes. There is a pressing need today to incorporate into the high school curriculum some form of consumer education, particularly in view of the fact that nearly one in three teenagers has a credit card. Certainly a great percentage are involved in buying new or used automobiles, motor scooters, clothing and miscellaneous merchandise.

"A brief sketch of the organization and cost of operation will be of general interest. Personnel staffing since the inception of the Division in June, 1961, seems to have remained constant with approximately four assistant attorneys general, three investigators, one law clerk and two and a half secretaries. Two assistants are assigned to the Seattle Office, with one full-time assistant in the Spokane Office, and one assistant each in Tacoma and Olympia with part-time responsibilities to the Consumer Protection Division.

"Of historical interest only is the fact that the 1961 Legislature appropriated $25,000 to the Attorney General's budget to enforce the consumer protection statutes. This amount, coincidentally, was the same amount budgeted by the defendants in the first major law suit brought by the Division. In the 1963-65 biennium a total of $160,702 was expended on consumer protection activities. Of this amount, a little more than $80,000 was expended in each fiscal year within the biennium. The appropriation for 1965-67 was only $303 greater than the amount expended in the 1963-65 biennium. We believe it is significant that without any increase in staffing, enforcement has increased during the past two years over the previous biennium.

"Just a word on the system of priorities and the direction of enforcement. We have found that because it is impossible to sue every violator in any industry area and rather than simply move against isolated offenders, the Division instead attempts to effect an industry-wide clean-up by moving formally against the largest and the worst offenders in the industry. These law suits serve notice to the lesser offenders, and with the assistance of trade groups we are able to provide the industry with a code of conduct or standards and assist the legitimate members in effectively eliminating deceptive practices and unfair methods of competition in that particular industry.

"The foregoing remarks represent merely a skeletal outline of the Division's experience in the last four years. Consumer protection as a concept in government's responsibility to the governed, generally coordinated with a law enforcement program is only awakening in our society. Various state governments and the federal government are listening to the voice of the consumer as the latter is becoming more organized and articulate. President Kennedy, who saw fit to become the first consumer lobbyist, lent the power and prestige of his high office to the pressing problems which affect the least of us. As a result the consumer's voice, first heard in the halls of the executive mansion, now is being heard in legislative assemblies throughout the nation. The circle of governmental involvement will be complete as these voices are echoed in the judicial forums of our land. The reaction by industry to the recognition and protection by government of the consumer's historic rights will have far-reaching consequences. Just as the industrial revolution irrevocably altered the economic, political, legal and social patterns of its day, so, too, will the revolt of the consumer against the encroaching epidemics of the marketplace irrevocably alter these same patterns in our time.

"Few areas of governmental activity provide the deep satisfaction to those involved with enforcement responsibilities as does the challenging area of consumer protection. When we talk of consumer protection we are concerned at the very least about the right of the people to have economic and governmental institutions and processes work for their benefit. We talk of those fundamental notions of fairness and equality, the realization of which is vital to the growth, and ultimately to the survival of the free enterprise society. As a society we will be judged not necessarily by our affluence or our power but by how we have dealt with each other."

Other States. In addition to those ten states having consumer-protection agencies within the Attorney General's office that have been reviewed herein, various sources indicate that several other states have such agencies. These states -- Alaska, California, Illinois, Minnesota, Oregon, and Wisconsin -- were also requested to provide information on their programs, but no responses were received therefrom.

Summary of Committee Meetings

A consumer protection agency program for Colorado was the subject of consideration, along with other matters, at five of the meetings held by the Committee on Consumer Problems during 1965 and 1966. As a result of these meetings, the members were able to develop more specific information on consumer protection programs in California and New Mexico as well as expressions of sentiment on the part of Colorado's Attorney General and various interested associations and individuals with respect to the necessity of a consumer protection program for Colorado.

California Consumer Counsel Program. At two of the committee's meetings, Mrs. Helen Nelson, California Consumer Counsel, and Mr. Daniel Weston, chief of California's Bureau of Electronic Repair, reported on consumer protection activities in their state.

In reviewing the history of her office since its establishment in 1959, Mrs. Nelson reported that, in the first year or two, more time was spent on law enforcement for consumers than on any other aspect. The office held regional conferences on the matter of credit, meeting with consumers, bankers, retailers, and others. Under its auspicies, the office joined with state colleges to assist in training local law enforcement personnel to be better able to identify false advertising and to prosecute the responsible parties. The Office of Consumer Counsel is now much less involved with law enforcement than it was initially, and local law enforcement personnel are now carrying this program forward on their own.

Mrs. Nelson indicated that a great deal of the efforts of her office today are devoted to participating in governmental meetings where decisions may be made affecting consumers. She stated that these efforts are not limited to legislative bodies, where proposed laws are under consideration, but include regulatory and rule-making agencies in the executive branch of state government. Another function of the office is preparing and issuing pamphlets to aid consumers, such as two recently-published pamphlets entitled "Will You Be Fooled by A Fraud?" and "How To Use The Small Claims Court." The office also prepares monthly news releases for use by the various communications media.

In response to committee questioning, Mrs. Nelson stated that, in California, the Office of Consumer Counsel works closely with Better Business Bureau offices throughout the state. The Counsel and BBB offices are complementary to one another, and the Counsel does not attempt to reconciliate or adjust consumer-business disputes since this is a BBB function. She thought that the creation of her office had helped, not hurt, the BBB offices in California.

With respect to representing the consumer before public bodies, Mrs. Nelson said that her office tries to follow a policy of dealing with issues of statewide concern, or at least of being

concerned only with matters that affect the majority of the state's consumers. It tries not to become concerned with local consumer problems and she cited this as another reason why local better business bureaus are necessary. Moreover, where there is a matter involving a difference of opinion among consumers themselves, the office would point out the various positions without taking a position itself.

After being requested for her opinion as to the approach she would suggest for a state that has neither a consumer counsel nor a consumer protection section within the Attorney General's Office, Mrs. Nelson replied that the first step should be one of enforcement of existing laws. For this purpose the Attorney General has the power and authority that is needed. This is not, however, an alternative to consumer representation at the conference table. In other words, a state needs both types of programs. A state needs law enforcement, of course, but the Attorney General, because of the nature of his office, is restricted to enforcing the laws and cannot increase the ability of consumers to function on their own; he cannot appear before regulatory bodies to present the consumer's point of view.

As examples of savings to consumers resulting from the work of the Counsel, Mrs. Nelson cited estimated savings of $11 million in the first year following enactment of legislation dealing with fraudulent television repairs. Another example involved changing the state's law on the method of computing sales tax payments by retailers since some $8 million was estimated to be the overcharge to consumers. Similarly, as a result of appearing before the insurance commissioner on a proposal to raise the premiums on credit life insurance from 50 cents to 80 cents per $100, the increase was held to a premium figure of 65 cents per $100, thereby achieving an estimated savings of $400,000 to installment buyers.

In his meeting with the committee, Mr. Weston reported much of the same information as that discussed by Mrs. Nelson. He indicated that the most significant advantage of having a consumer counsel office is that consumers have a focal point for collecting and disseminating information, and California has obtained some very important results from this process. The counsel can determine what are the problems of consumers, the degree of these problems, whether one is a state or a local problem, what the feeling of the electorate is on a specific problem, and data is provided for creative research into the problems of consumers. Sometimes the conclusion would be reached that a new law either was or was not needed, or even that the necessary law was already in effect that could be used to correct a problem situation but was buried in the statutes.

Mr. Weston concluded his remarks to the committee by saying that he thought any consideration of reasons for providing a consumer counsel office could not be separated from the philosophical reasons underlying such an office. In our free enterprise

system, no man is free to engage in uninhibited behavior; instead, society requires a man to behave and act responsibly. Thus, he reported, the consumer counsel program is supported by the California legislature because it strengthens the free enterprise system.

New Mexico Consumer Protection Program. Mr. Boston Witt, New Mexico Attorney General, met with the committee to review his experience with the newly-formed Consumer Fraud Section within his office. Mr. Witt said that several reasons had caused him to suggest that the consumer protection function in New Mexico should be placed in the Attorney General's Office, as follows:

"First: The National Association of Attorneys General, which has studied and been active in consumer affairs for many years, strongly recommends this method -- as a matter of fact it passed a resolution at its annual meeting in San Antonio, Texas, last June (1965) recommending this approach.

"Second: It was my feeling that, at least in New Mexico, the cost of administering the program would be less if placed under the Attorney General's Office rather than creating a new agency. This has proved true so far in New Mexico. Only one new employee has been hired to administer the program with the remainder of the staff lending assistance when needed.

"Third: In the last analysis an effective consumer protection program requires at least some court action. This has been the pattern throughout the nation. It seemed to me to be a duplication of effort to establish a new agency which would ultimately have to rely upon the Attorney General's Office for legal activity.

"Fourth: Most of the day-to-day problems of administering a consumer protection program involve a careful analysis of facts as they relate to extremely technical legal terminology -- as any consumer protection statute must contain. I felt and continue to feel that a lawyer is more qualified for this function than is a layman.

"Fifth: While a sound consumer protection program must contain an effective educational program within it, it was my opinion and it continues to by my opinion that the Attorney General's Office is just as competent to undertake such an activity as is any one. (The Booklet 'Know Your Rights When You Buy On Time' is the first in a series of educational pamphlets to be produced by the Consumer Fraud Section of my office.)

"Sixth: The criticism has been advanced that a consumer protection program must have a layman's touch rather than a lawyer's touch. This may have some validity; however, to overcome this possible disadvantage I have appointed an Attorney General's Advisory Committee on Consumer Problems composed of thirty-seven women throughout the state who consult and advise with me frequently

on consumer problems. I believe that this committee has overcome that objection while retaining the essential legal ability of the Attorney General's Office.

"Seventh: By having the power and dignity of the Attorney General's Office behind such a program many problems can be solved and practices stopped by reconciliation and mediation -- the 'come, let us reason together' approach, if you will. I do not feel that such a tool would be as effective under some other department.

"Eighth: Complaints received from consumers can be investigated by the staff of trained professional investigators in my investigation section of the Department of Justice.

"Ninth: The Federal Trade Commission has just established a program of cooperation with the states on consumer problems. This is a very fine program. It will allow immediate dissemination of fraud practices throughout the country and will make available to the states the vast resources of that commission. This procedure was suggested by the National Association of Attorneys General and that association has established a close working relationship with the commission that other agencies do not have. ...

"Finally, let us say a few words about the performance of the Consumer Fraud Section generally. It is my belief that the reason we have not had more activity nationwide on consumer problems is because the program has not been sold to the business community. When I first undertook such a program and started drafting proposed legislation last year, I contacted all interested parties in the affected industries and showed them the proposed drafts and held extensive discussions with them on the impact of such legislation. As a result of this approach, the Better Business Bureau, the New Mexico Retail Association, the Small Loans Association, and many related business associations unanimously endorsed the program and were of great assistance in obtaining passage of the legislation. When the business community is properly informed of the goal of such legislation, they almost always heartily endorse the program. It only makes sense -- the legitimate and ethical dealer can only benefit by having the unscrupulous and unethical dealer put out of business."

Colorado Attorney General. Mr. Duke W. Dunbar, Colorado Attorney General, provided the committee with information developed by the National Association of Attorneys General on state consumer protection programs, including a copy of the resolution adopted by the association at its 1965 annual meeting urging "the establishment of consumer fraud bureaus within the office of Attorney General of the several states and the adoption of legislation to provide law enforcement with additional remedies, including injunction, in consumer fraud cases."

Mr. Dunbar pointed out that any Attorney General, using his common-law powers, could establish a consumer fraud section within his office. However, he believed that it would be much better for

a state's legislature to create such a section through statutory action.

Other Comments. Mr. Rudolph Gonzales, as chairman of the Denver War on Poverty Board, reported that he believed consumer problems and the war on poverty program are directly related. The poorly educated often are victims of various rackets, and he felt consumers should have access to knowledge and to have their views expressed. It was his experience that in most committee meetings business and industry are usually represented but not consumers as such. Also, the lack of knowledge on the part of consumers can result in their becoming suspicious or distrustful of all businesses when they feel that they are being taken advantage of in one area, such as automobile repairs, for example, and this causes a chain reaction which is detrimental to our whole society. Mr. Gonzales concluded his remarks to the committee by saying that providing assistance to consumers represents one of the most important areas in the war on poverty, and the responsibility lies with the state to provide this governmental service.

Mr. W. Dan Bell, general manager of the Rocky Mountain Better Business Bureau, suggested that there is no need for another agency of government to be established to deal with consumer problems. Among Mr. Bell's remarks to the committee were the following:

"As the committee also knows from its visit to the Better Business Bureau offices, the services being provided directly for the protection of consumers in this state are substantial, costly, and beneficial. The committee viewed office equipment approximating $60,000 in value and housing of an equal value. Some 24,000 files of consumer experiences represent an expenditure by business of nearly $1 million during the past 13 years to accumulate. During this period, this voluntary agency of business has served hundreds of thousands of consumer problems free of charge; has distributed hundreds of thousands of pamphlets concerning more than 60 consumer problems; has cleaned out of the area the majority of health and medical quacks that existed prior to the BBB's operation; has vigorously fought TV racketeers and saved millions of dollars for consumers when television came to Denver in 1954. Through the years it has effectively curbed and routed invasions of spurious stock promoters; unlicensed insurance promotions; wasteland real estate schemes; abuses of funeral plan offerings -- in fact, there is hardly a trade or profession whose problems of ethics and consumer responsibility have not felt the direct influence of BBB activity. It has worked and is working with the Advertising Club's Ethics Committee to correct advertising transgressions and protect consumer confidence in advertising.

"Having served the public and earned its confidence; having evidenced its record of assistance to necessary governmental processes; having proven the substantial costs of operating this type of agency; having provided assistance to this committee toward its efforts to achieve its prescribed objective, your friend, your

Better Business Bureau, respectfully urges you to avoid the problems that will be unnecessarily created by the formation of a state-operated, tax-supported consumer fraud agency. Our reasons for this position are not primarily the effect such an agency would have on the operations of a better business bureau, but for more compelling reasons which would progressively affect the processes of orderly government, the economy, the ever-increasing tax burden, and the public....

"We say that the multitude of governmental agencies existing at all levels is adequate to safeguard and protect the consumer interest. We say that the processes of revision and bolstering of laws to deter and punish fraud under which these agencies operate are much more effective in protecting the consumer interest than the constant creation of layer upon layer of new agencies which add to the tax burden, the further complication of conducting legitimate business, and the confusion of the consumer....

"We believe that the function of government is to aid legitimate business to maintain a healthy market place wherein consumers can exercise freedon of choice -- yes, to even make an occasional mistake. We believe that government should function to punish the intentional wrong-doer -- the fraud, the cheat, the swindler. We believe that the placing of government between business and its customers as a guiding, directing, interfering influence such as the pattern of state-operated consumer fraud agencies has developed in other states, will adversely affect our already delicate economy, discourage the growth of small business enterprise in Colorado, and will prove to be an unwarranted expenditure of the precious tax funds of this state.

"We urge this committee to pursue its worthy course of fact-finding and investigation to pinpoint those areas of consumer problems that are created by cheating and chicanery, and to recommend sound legislation to punish and deter fraud. Let legitimate business, through its voluntary organizations and its Better Business Bureau, continue in partnership with you to create sound means for the protection of the public -- for only by serving the public interest can business earn and deserve public confidence. Remember -- to legitimate business -- public confidence counts most."

Mr. William Falkenberg, chairman of the board of directors, Rocky Mountain Better Business Bureau, added the endorsement and support of the board and Better Business Bureau members for the views expressed by Mr. Bell. Mr. Falkenberg also stressed that it has been the wish, opinion, and decision of the board of directors that the bureau operates as a consumer-oriented concern funded by business. He cited as an example of this position the adoption of codes of ethics for various businesses; these codes were initiated by the BBB and, he pointed out, this has solved the TV repair problem in Denver without the need, and cost, of a governmental program.

Mr. Gordon R. Yates, president of the Advertising Club of Denver, as part of his comments with respect to false and misleading advertising, said:

"The Denver Better Business Bureau is doing what we earnestly believe to be an outstanding job of efficient guardianship -- blowing the whistle on obvious offenders, and otherwise curtailing violations of truthfulness and taste.

"The Ethics Committee of the Advertising Club of Denver, for the past three years especially, has concentrated on working closely with the Better Business Bureau. One year ago, the Club and BBB jointly adopted the 'Advertising Code of American Business,' and detailed plans for its local implementation. Briefly, it covers a nine-point program, involving Truth, Responsibility, Taste and Decency, Disparagement, Bait Advertising, Guarantees and Warranties, Price Claims, Unprovable Claims, and Testimonials. Its aim is the encouragement of the highest possible standards of truthfulness, good taste, and full disclosure of pertinent facts in all forms of advertising. It represents the combined efforts of two national groups in which the Denver Advertising Club holds membership -- the Advertising Association of the West and the Advertising Federation of America. The code has also been officially endorsed by the National Association of Better Business Bureaus. Denver is one of the first major cities to adopt a formal program of this type. This is another logical and necessary extension of Ad Club and BBB activities to date.

"Working with the Better Business Bureau, the Advertising Club had a part in halting bait-and-switch advertising practices of a local tire outlet, and we will continue to offer the advisory services of our Ethics Committee for use as the Better Business Bureau may see fit.

"The advertising business does not pretend to have all the answers. We are acutely aware of the problems, because they affect us both as businessmen and as consumers. We sincerely believe that steady progress is being made to correct abuses, and that the Advertising Club of Denver and other businesses and trade associations can play a helpful role, by strengthening BBB activities.

"For all the foregoing reasons, we are opposed to the formation of a Consumer Council operated by the state government and supported by additional tax dollars from the consumer."

## False and Misleading Advertising

Advertising represents an essential ingredient in the market place relations between buyer and seller, and because the role of advertising is a fundamental part of the buyer-seller process, the necessity of honest and truthful advertising has long been recognized in this country. Since 1911, when it was first proposed,

the Printers' Ink Model Statute for Truth in Advertising, or close variations of it, have been enacted into law in some 45 states, including Colorado where the act was adopted in 1915.

As originally proposed in 1911, false advertising would be based on three elements: (1) an intent to sell, dispose of, or increase the consumption of goods or services; (2) the placing before the public, with such intent, of any type of advertising; and (3) the existence, in such advertising, of a statement that is untrue, deceptive, or misleading. The advocates of this proposal thought of it more as a deterrent than as an instrument of punishment and, based on Colorado's experience at least, this thinking has proved valid. The number of instances in which the statute has been invoked in court cases is quite small, and at least one district attorney in Colorado will no longer file a case under this law because of the vague and ambiguous provisions that it contains.

On the other hand, it appears to be a common practice for better business bureau officials to use this law by calling in an offending advertiser and going through the statutory provisions point by point to indicate where his actions are in violation of this act. While the punishment for violations of this law is slight, exposure by bringing a criminal action in the courts results in publicity that may be severely damaging to an advertiser.

In recent years, two questionable advertising practices -- phony price comparisons and bait advertising -- have caused concern as to the effectiveness of the model statute prepared more than half a century ago. Federal Trade Commission lawyers believe that both practices could be tried under the model statute and there have, in fact, been a number of cases where bait advertisers and advertisers using phony price comparisons have been found guilty under the provisions of the model law.

At the same time, however, the validity of these applications of the model law has not been firmly established by a decision in a court of appeals. To make certain that there is no such loophole in the law, a number of states have adopted amendments specifically aimed at bait advertisers and at advertisers who misrepresent the value of the product advertised. Among those suggesting the updating of the 1911 model statute is The Council of State Governments' Committee of State Officials on Suggested State Legislation when it recommended bait-advertising legislation in its 1955 report.

## Summary of State Laws on Misleading Advertising

Of the laws of the 50 states and the District of Columbia, 45 general false advertising statutes appear to be patterned after the original Printer's Ink model proposal and seven statutes are not comparable, as may be noted by the information reported in Table I. (These numbers do not add to 51, the number of jurisdictions surveyed, since Arkansas and Delaware appear not to have general false advertising statutes, while Illinois has three general

laws, and North Dakota has two. Both Illinois and North Dakota have Printers' Ink statutes in addition to their other general laws.)

Of the 45 states having adopted and retained a version of the original Printers' Ink statute, only 12 states have seen fit to adopt and retain versions of this model statute that contain only the three elements of the offense, i.e., (1) an intent to sell, dispose of, or increase the consumption of, goods and services; (2) the placing before the public, with such intent, of any type of advertising; and (3) the existence, in such advertising, of a statement or representation of fact which is untrue, deceptive, or misleading, plus a misdemeanor penalty for the violation of this offense. The balance of the 45 states have statutes which differ substantially from the original version of the model statute.

Knowledge or Deceit Required. Fourteen states have statutes that require the prosecution to prove, in addition to the three aforementioned basic elements, that the advertiser had either acted "knowingly" or "knew or should have known" that an advertisement was false, misleading, etc., and ten states have deceit provisions, i.e., provisions that require the prosecution to prove either that the advertiser acted "knowingly or willfully and with intent to mislead" or that he knew that his advertisement was "untrue and designed to be deceptive."

Media Exempted From Prosecution. Of the 45 states having versions of the Printers' Ink statute, 21 provide either total or partial exemption to publishers from prosecution, and 13 states totally or partially exempt radio and television broadcasters. While the majority of these states provide total immunity from prosecution, Wisconsin exempts broadcasters and publishers only from bait-advertisement prosecutions, Missouri exempts only broadcasters from bait- advertisement prosecutions, and Hawaii exempts only newspaper publishers from all types of false advertisement prosecutions. Seven states that totally exempt publishers do not exempt broadcasters, either totally or partially. In one state, New York, media have been exempted from prosecution by court interpretation rather than by legislative enactment.

Bait Advertisements and False Price Comparisons. The laws of 12 of the 45 states contain special provisions relating to "worth" or "value" advertisements, and 16 prohibit a person from advertising with the intent of not selling the items, or of not selling the items at the advertised price.

Enforcement Provisions. In addition to the misdemeanor-penalty provisions that each of these 45 Printers' Ink type statutes contain, several statutes contain additional enforcement provisions. Ten states have laws containing provisions for injunctive proceedings, and two of these statutes provide that the Attorney General may accept a written assurance from an alleged violater in lieu of criminal prosecution. California's statutes also provide a civil penalty in addition to the criminal prosecution.

## Table I

## Summary of State Statutes Relating to Advertising Generally

### I. "Printers' Ink" Statutes

A. Statutes Patterned After Model Statute (45). These statutes require proof of only three elements: 1) an intent to sell, dispose of, or increase the consumption of, goods or services; 2) the placing before the public, with such intent, of any type of advertising; and 3) the existence, in such advertising, of a statement or representation of fact which is untrue, deceptive, or misleading. Violations are misdemeanors.

ALABAMA (tit 14, sec 211(a)), ALASKA (sec 45.50.490), ARIZONA (sec 44-1481(a)), CALIFORNIA (Bus. and Prof. Code, sec 17500, 17501, 17502, 17534, and 17535), COLORADO (sec 40-15-1 to 40-15-3), CONNECTICUT (sec 53-365), DISTRICT OF COLUMBIA (sec 22-1411 to 22-1413), FLORIDA (sec 817.40 to 817.47), GEORGIA (sec 106-501 to106-505), HAWAII (sec 289-14 to 289-16.3), IDAHO (sec 18-3112), ILLINOIS (chap 121½, sec 157.21), (Illinois Annotated Statutes contains three general advertising statutes, including one that is modeled after the "Printers' Ink" statute.) KANSAS (sec 21.1112), KENTUCKY ( sec 434.270), LOUISIANA (sec 51:411), MAINE (tit 17, sec 1620), MARYLAND (art 27, sec 195 and 198), MASSACHUSETTS (chap 266, sec. 91, 91A, and 92), MICHIGAN (sec 750.33), MINNESOTA (sec 650.52), MISSISSIPPI (sec 2003.5 and 2144.3), MISSOURI (sec 561.660 and 561.665), MONTANA (sec 94-1818 to 94-1828, merchandise only), NEBRASKA (sec 28-1235 to 28-1236), NEVADA (sec 207.170), NEW HAMPSHIRE (sec 580:13), NEW YORK (Penal Law, sec 421), NORTH CAROLINA (sec 14-117), NORTH DAKOTA (sec 51-12-01 to 51-12-14; see below for other general statute), OHIO (sec 2911.41), OKLAHOMA (tit 21, chap 61, sec 1502), OREGON ( sec 648.810), PENNSYLVANIA (tit 18, chap 2, sec 4857 and 4857.1), RHODE ISLAND (sec 11-18-10 to 11-18-12), SOUTH CAROLINA (sec 66-3), SOUTH DAKOTA (sec 13.4201), TENNESSEE (sec 39-1910 and 39-1945), TEXAS (Penal Code, art 1554 and 1554(a)), UTAH (sec 76-4-1), VERMONT (tit 13, sec 2005), VIRGINIA (sec 18.1-131, 18.1-131.1, 18.1-131.3, 18.1-131.4, and 18.1-131.6 to 18.1-131.8), WASHINGTON (sec 9.04.010), WEST VIRGINIA (sec 5979), WISCONSIN (sec 100.18), WYOMING (sec 6-35).

1. Statutes Requiring Knowledge (14)

a. Knowingly (4)

ALASKA, NEVADA, NEW HAMPSHIRE, SOUTH DAKOTA.

b. Known or Should Have Been Known (10)

Usually requires that the advertiser knew or by the exercise of reasonable care should have known.

CALIFORNIA, FLORIDA, GEORGIA, MARYLAND, MASSACHUSETTS, MISSISSIPPI, NORTH DAKOTA, PENNSYLVANIA, TEXAS, UTAH.

2. Statutes Requiring Deceit (9)

a. Knowingly and With Intent (6)

ARIZONA (real estate), FLORIDA (or should have been known and with intent), KENTUCKY, SOUTH CAROLINA, TENNESSEE, VERMONT.

b. Untrue and Designed to be Deceptive (2)

DISTRICT OF COLUMBIA, RHODE ISLAND.

c. Willfully and With Intent to Mislead (1)

NORTH CAROLINA.

B. Special Features of "Printers' Ink" Statutes

1. Media Exempted Usually requiring that the broadcasters orpublishers either acted in good faith or were unaware of the falsity of the advertisement.

a. Radio and Television Broadcasters (13)

ALASKA, CALIFORNIA, FLORIDA, GEORGIA, ILLINOIS, MAINE, MICHIGAN, MISSOURI (bait advertising only), NEVADA, OHIO, PENNSYLVANIA, RHODE ISLAND, WISCONSIN (bait advertising only).

b. Publishers (21)

ALASKA, CALIFORNIA, COLORADO, FLORIDA, GEORGIA, HAWAII (newspaper publishers

only), ILLINOIS, KANSAS, MAINE, MASSACHUSETTS, MICHIGAN, MISSOURI, NEVADA, NORTH DAKOTA, OHIO, OREGON, PENNSYLVANIA, RHODE ISLAND, WASHINGTON, WISCONSIN (bait advertising only), WYOMING.

2. Special Features

   a. Special Provision Relating to "Worth" and "Value" (12)

   Usually requires that the worth or value of any thing advertised is the prevailing market price, wholesale if the offer is wholesale, retail if the offer is at retail, at the time of publication of such advertisement in the locality wherein the advertisement is published.

   CALIFORNIA, FLORIDA, GEORGIA, HAWAII, LOUISIANA, MISSISSIPPI, NEBRASKA, NORTH DAKOTA, SOUTH DAKOTA, TEXAS, VIRGINIA, WISCONSIN.

   b. Bait Advertising Provisions (16)

   These provisions usually prohibit advertising with the intent of not selling, or of not selling at the price advertised.

   CALIFORNIA, FLORIDA, GEORGIA, HAWAII ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MISSOURI, OHIO, PENNSYLVANIA, RHODE ISLAND, TENNESSEE, VIRGINIA, WISCONSIN.

3. Enforcement Provisions. Provisions other than criminal prosecutions that could result with a sentence of a fine, imprisonment for not more than one year, or both.

   a. Injunctive Proceedings (10)

   ALASKA, CALIFORNIA, FLORIDA, GEORGIA, HAWAII, MINNESOTA, NEVADA, NORTH DAKOTA, RHODE ISLAND, VIRGINIA.

   b. Written Assurance of Discontinuance (2)

   ALASKA, HAWAII.

c. Other (1)

CALIFORNIA ( civil penalty $0-$2,500. If civil action is brought by Attorney General, one-half of the fine is deposited in county treasury; if brought by District Attorney, entire fine deposited in county treasury.)

II. Other General Advertising Statutes (7)

A. "Consumer Fraud" Statutes Five states have recently enacted statutes that differ both as to the definition of false advertisements and as to the nature by which the false advertisements are to be discontinued. These statutes provide for civil, rather than criminal, prosecutions and penalties, and except for North Dakota's statute, specifically define the term "false advertisement" to include omissions of material facts. In these states, the Attorney General has the responsibility to enforce these statutes and has within his office a consumer fraud division or consumer council. What appears to be the three major obstacles to the successful enforcement of the general advertising statutes, i.e., the criminal nature of the saction, the inclusion of requirements of intent, materiality, and other restrictive elements, and the failure to provide administrative machinery for enforcement as the federal government has done,[a] are not found in these statutes.

ILLINOIS (chap 121½, sec 261 to 271 (Consumer Fraud Act)), IOWA (sec 713.24 (1963 Consumer Fraud Act)), NEW JERSEY (sec 56:8-1 to 56:8-12 (Consumer Fraud Act)), NEW MEXICO (sec 49-12-1 to 49-12-7; False Advertising Act), NORTH DAKOTA (sec 51-15-01 to 51-15-10 (Consumer Fraud Act)).

B. Other General Statutes Two states have statutes that contain the three elements present in the "Printers' Ink" statutes, but in language that radically departs from that which is usually present in a statute patterned after the model statute. Both of these states have revised their criminal codes recently, and both of their statutes are found in their revised criminal codes.

a. "The Regulation of Advertising," Columbia Law Review, Volume 56, 1956, pp. 1064-1065.

ILLINOIS (chap 38, sec 17-1-1(c): "He knowingly makes or directs another to make a false or deceptive statement addressed to the public for the purpose of promoting the sale of property or services;..." A violation of this subsection is a misdemeanor.)
INDIANA (sec 10-3037(3): "He disseminates or causes to be disseminated an advertisement containing a knowingly false, misleading or deceptive statement in any form or through any medium, to the public, including door to door distribution, for the purpose of promoting the purchase or sale of property or services of any kind, or the acceptance of employment. In determining whether any advertisement is untrue, deceptive or misleading, there shall be considered, among other things, not only representations contained or suggested in the advertisement, by whatever means, including device or sound, but also there shall be considered the extent to which the advertisement fails to reveal material facts in the light of such representations;..." A violation of this subsection is a misdemeanor.)

## Summary of Committee Meetings

Various examples of abuses in advertising were reviewed by the committee, including the appearance before the committee of a Denver area housewife who, after responding to a classified advertisement for part-time employment, discovered that she had signed a contract to purchase a cacuum cleaner instead of a receipt for a "salesman's sample." Other types of misleading advertising in the Denver area involved such items as automobile tires, automobile transmissions, aluminum siding, frozen meats, house paint, and furniture company liquidation sales.

Mr. Bell of the Rocky Mountain Better Business Bureau endorsed the proposal to amend Colorado's present misleading advertising law to contain a more specific definition of false advertising and to broaden its scope to include bait advertising as a prohibited offense. He suggested that this change should be made and that existing state and local agencies should be motivated to use the available statutory tools to correct problems of consumers.

Mr. Yates, president of the Advertising Club of Denver, after reviewing the purpose of his association, reported that:

"According to the experience of the Federal Trade Commission, only a very small percentage of advertising can be construed as fraudulent or even misleading. The best available estimates of both government and trade association groups is that less than one per cent of advertising today is fraudulent, and a still smaller per cent may be deliberately misleading. In my best judgment, corresponding figures for a city like Denver are even lower. The attention which flagrant violators call to themselves is always

greatly out of proportion to their actual volume of advertising.

"What is being done to reduce even this small percentage of false or misleading advertising?

"Most firms who want to stay in business know that they do so only on a reputation for honest dealing, and that fly-by-night operators are under constant watch from all sides and must move on and/or eventually go out of business.

"Through membership in the Advertising Club of Denver, advertisisers, agencies, media and suppliers are made still more aware of the benefits of honest sales approaches, and the practical dangers and moral wrong of even border-line practices. With this in mind, the Club seeks out new memberships on the broadest possible business base.

"For many years, the Advertising Club of Denver Education Committee has travelled widely in and beyond Colorado conducting free clinics on effective and truthful advertising for the small businessman. Advanced advertising courses are sponsored by the Club at our local colleges and universities. We have always been strong participants in Career Days at our high schools.

"Advertisers and media alike try to keep media above reproach, because they realize that one offender hurts all others. The various media associations (newspapers, magazines, outdoor, radio, television, etc.) have always worked hard at tightening their own restrictive codes on the advertising they will accept....

"We are acquainted with existing state laws affecting advertising, and with the various agencies who have responsibilities for enforcement in these and other areas. We are also familiar with the Revised Printers' Ink Model Statute, which we understand has been accepted, with modifications, by some states. We are basically opposed to legislation which would allow the state government to regulate, restrict, or otherwise control the free enterprise activities of honest business. Such legislation contains the dangers of penalizing 99 per cent of business for the transgressions of one per cent.

"However, we are always most willing to cooperate with other business and trade associations in working out with this committee an effective and efficient system for halting advertising that is clearly against the public interest....

"Advertising people can be only PRO-consumer. The consumer is our business. We talk with him and her constantly through media. WE are consumers, ourselves. Advertising people are thus superbly equipped to create and communicate a consumer education program that can assist both business and government in achieving, at comparatively low cost, the same goals expected of a state-operated, tax-supported consumer council.

"We acknowledge with regret the one per cent or less of bad apples in our barrel, much as we condemn the tiny minority of shoddy practioners in other fields that prey upon the public. We look forward to a day when dishonesty and deception in all business and professions will be pursued with diligence."

Mr. Paul Blue, president of the Colorado Broadcasters' Association, informed the committee that, from the viewpoint of broadcasters, no changes were necessary with respect to false advertising as applied to them since they are adequately regulated now by the Federal Communications Commission and the Federal Trade Commission. Also, he said, "The National Association of Broadcasters have their own self-adopted Radio and Television Codes. These codes concern the content both of programs and advertising. This industry self-policing activity includes field monitoring. In essence these codes call for the individual licensee to be on the alert for any deceptive advertising so as to avoid being an unwitting party to its transmission. Although broadcasters may not bear the primary responsibility for advertising claims, the 'public interest' duty of all station licensees does require that they be familiar with deceptive advertising formats so as to avoid unwittingly becoming a party to any commercial dishonesty directed to the public consumer."

In addition to regulations of the federal commissions and industry codes, Mr. Blue reported that individual stations take additional steps on their own to insure, as much as possible, that advertising they carry is not purposefully fraudulent or misleading. As just one example, he said that "in Denver we have available to us the services of the Better Business Bureau. Their Community Service Bulletins can provide a useful alert to possible problem areas."

Mr. Robert Lucas, manager of general advertising for The Denver Post, stated that newspaper officials work closely with the Better Business Bureau and that the Post endeavors to eliminate false and misleading advertising since many readers hold the paper responsible if an ad is false or misleading. Mr. Lucas indicated that the number of false-advertising complaints lodged with the Post had decreased over the years.

## Subdivision Regulation

In 1963, the General Assembly adopted an act designed to provide for the registration of subdivision developers in Colorado. Among other things, this law, Sections 118-16-1 through 118-16-7, Colorado Revised Statutes 1963, required applicants to disclose the names and addresses of the principals in the enterprise and length of time engaged in subdivision development to the Colorado Real Estate Commission. The law authorized the commission to refuse, revoke, or suspend the registration of any developer if, after an investigation, it determined that the developer:

(1) Does not have a reputation for competency, honesty, and fair dealing;

(2) Has failed to comply with or has violated any provision of this law;

(3) Has made a statement or concealment, known by him to be false or misleading, in his application for registration;

(4) Is insolvent; or

(5) Has engaged in illegal or unethical practices with respect to the promotion, sale, or lease of real estate.

In March of 1965, the district courts of the First and Twentieth Colorado Judicial Districts held that this 1963 act was unconstitutional. In the action brought in the First Judicial District, the defendant was charged with a felony for failing to register as a subdivision developer under the provisions of Article 16 of Chapter 118, C.R.S. 1963. The court said:

"There is no provision in the article for a required hearing before the commission. 118-16-5 under subparagraph (2) provides: 'Any hearing held under this section shall be in accordance with the procedures established in sections 3-16-4 and 3-16-5, C.R.S. 1963.'; but section 3-16-4 subparagraph (2) provides: 'In any such proceeding in which an opportunity for agency hearing is required under the constitution or by this or any other statute, ******' and this seems to apply only when a hearing is required. Under article 118-16 C.R.S. 1963 no such hearing is required. It is true that in 118-16-5 subparagraph (2) it is provided that 'any hearing held under this section shall be in accordance with the procedures established in sections 3-16-4 and 3-16-5 C.R.S. 1963,' but it does not require a hearing.

"In the information filed herein the defendant is charged with violating section 118-16-1 and this attempts to inflict the penalty involved in 118-16-7, in other words a felony. It appears to the Court that there is no provision for a hearing or a finding by the commission upon which 118-16-7 could be predicated. There is considerable doubt in the Court's mind as to the constitutionality of the definition of a subdivision; however, it appears to this Court that the gravest error in the laws above-referred to is the fact that no provision is made for a hearing before a commission to determine the validity of the requirements and the commission's finding thereon as to 118-16-3 C.R.S. 1963. Further, there is no provision for a time limit in which such hearing shall be conducted. Conceivably an applicant for a certificate as required by Chapter 118-16 could file his application with the commission and the commission could completely ignore the application or deny it, without ever having notified the applicant thereof under this article. Apparently it is in the discretion of the commission whether they desire to hold a hearing or not, and the applicant is totally without remedy unless the commission decides to hold a

hearing, which they are not required to under the statute.

"The Court is of the opinion that this article is so vague, indefinite and uncertain as to deprive an applicant of his property without due process of law; and, further, that he may be charged with a felony if he attempts to sell or dispose of his property, should he come within the definition set forth in 118-16-1. This in the Court's opinion is in violation of the Constitution of the United States and the Constitution of the State of Colorado."

These 1965 district court rulings were not appealed so that the Colorado Supreme Court has not ruled on the constitutionality of the 1963 subdivision developer registration law. On the basis of committee discussion and comments of various persons and lawyers attending the committee's meetings, however, there seems to be little question but that the present language needs to be changed if there is to be any effective regulation of subdivision developments in this state.

As reported by a committee of the National Association of Real Estate Boards, "in their quest for large profits and because of lack of sufficient state supervision, if any, in some areas, land speculators are offering lots or parcels of land to the general public throughout the United States through national news media and otherwise, resorting in some instances to misrepresentation or fraud in securing contracts of purchase from the unwary."

So far as conditions in Colorado are concerned, Mr. Bell stated to the Committee on Consumer Problems that it had been the experience of the Rocky Mountain Better Business Bureau that fraudulent land promotions have been a big problem in this state. He felt this to be a problem requiring the mutual effort of the Colorado Real Estate Commission and county commissioners to correct since, on occasion, the land may be in Costilla County, the buyer in Kansas, and the promoter in Denver, for example.

One of the county commissioners of Saguache County, Mr. S. Verne Cooper, outlined some of the past and present problems resulting from subdivisions in his county:

(1) The sale of land by subdividers to purchasers prior to the time at which the subdividers gained possession of the land;

(2) The cost of recording lots above the revenue received from taxation of the lots since some of the lots sell for as low as seven to ten dollars; and

(3) The difficulty of not knowing who at any one moment owns the land or how many lots in each subdivision have been sold. The county commissioner suggested that the General Assembly adopt a law giving the boards of county commissioners the authority to require, by resolution, that all plats must be approved by the commissioners before they may be recorded.

Mr. William Jones, deputy district attorney for the First Judicial District, pointed out a problem in Clear Creek County since one area of this county cannot be reached from the county seat without traveling through another county. If a subdivision were to be developed in that particular area of Clear Creek County, he said that the county could not afford to maintain the roads therein. Such a development would also pose problems with respect to water and sanitation and schools. He suggested that the primary control of subdivisions should be retained in the counties since county officials are familiar with the terrain and the local problems, and are held accountable by the county residents, although it might be advisable for the state to adopt general standards and requirements. It might be necessary, he added, to make selling subdivided lots without the approval of the subdivision by the county commissioners a felony and make the commissioners require a certificate of title as proof of ownership.

In Boulder County, Mr. Joseph M. Smith, county commissioner, reported, roads within subdivisions are the responsibility of the owners until accepted by the commissioners and they are not accepted by the commissioners unless and until they meet standards of valuation and highway construction. The commissioner from Boulder County mentioned four areas needing legislative attention:

(1) Penalties for selling land outside of recorded subdivisions should be much more clearly stated in the present law. Conflicts concerning the "real estate provisions" of the statutes and the subdivision provisions are a case in point. Furthermore, the fact that a penalty can only be invoked when reference is made to a plan or plat of an unrecorded subdivision creates almost insurmountable enforcement problems.

(2) The rapid occupancy of many open areas in the state may prevent public school and park agencies from acquiring necessary land for their public purposes in advance of actual platting. To allow these financially-pressed public agencies to acquire "raw land" instead of "improved land," the statutes should permit payment of money in lieu of land in new subdivisions. Such funds could then be accumulated from a number of small subdivisions and used to purchase central sites which would permit future school and park developments to serve these new areas.

(3) State laws do not provide any means for counties to guarantee the installation of public improvements such as necessary water and sewer lines (in areas where this is possible), construction of bridges and drainageways, and paving of streets. The posting of an improvement bond or some type of "escrow" arrangement for county subdivisions would be useful in assuring future land owners that necessary physical improvements would be completed on the site. Without such guarantees, later difficulties involving mail service, access for fire trucks and ambulances, and general inconvenience to property owners may become prevalent.

(4) While assessment practices is a subject that is technically outside the province of state subdivision regulation, policies concerning assessment and taxation do have a definite bearing on the desire of land owners to subdivide their properties. Many forest and agricultural lands are being subdivided prematurely because the owners find land assessments too high for continued forest or agricultural use. Revised assessment practices such as are now followed in Maryland, New Jersey, Florida, and California might help to prevent this. In these states, lands are assessed according to the permitted uses only. For example, farmland is not assessed for its potential residential use until such time as the land is actually sold or platted for residential development. By this process, lower assessments apply until such time as the land owners are ready to sell their properties for some type of residential use, rather than having them feel forced into residential developments in order to cover increasing assessment rates.

Mr. Tom Pugh, director of the Boulder County Department of Development, also added that Boulder County has a few problems with fraudulent sales of mountainous and nonmountainous property. The county is obligated to issue building permits if certain minimum standards are met and, as a result, officials are faced with a strip development having a few rights-of-ways or access to property behind the strip. In the mountains, property lots are sometimes sold in a haphazard manner to individuals with no roads leading to the property or, occasionally, they have roads which are better described as trails, sometimes with as much as 30 per cent grades.

Mr. Carl Enyeart, Summit County Commissioner, felt that county commissioners have pretty good control over subdividers under the present laws, although there are assessment problems in some counties. A question exists as to where additional power to control subdividers should lie, and he thought that much more communication should exist between state and local governments in regulating subdivision developments. In certain areas, a very real problem exists when a federal governmental agency -- the Bureau of Land Management -- follows the policy of selling small homesites with no consideration for the need of roads and other local governmental services.

In this latter connection, Mr. Ron Cook, of the Colorado County Commissioners' Association, informed the committee that the Bureau of Land Management had taken aerial photographs and topographical surveys of its holdings in Summit County, but it had drawn lots with no relation to topography. As a result, some of the road grades in its subdivisions are 20 to 30 per cent, and one road exceeds 80 per cent in grade. He felt that the bureau was the biggest offender of subdivision development in Summit County.

Mr. Cook added that some false representations made by subdivision promoters are fantastic. One promoter of a subdivision that was blanketed with a $250,000 mortgage told his prospective

customers that the land was free of any encumbrances. Moreover, there is also misrepresentation as to the condition of the land as well as to land titles. Although a problem does exist with respect to subdivision developers, Mr. Cook said that the county commissioners are opposed to any state legislation that places unilateral control over subdivisions with a state agency consisting of two or three men. The commissioners want local control, since they know the land, but not the subdividers. The state can help by extensively searching the backgrounds of the promoters who apply for licenses.

Mr. Ed Northway, representing the Home Bulders' Association of Metropolitan Denver, informed the committee that 99 per cent of the state's subdividers work closely with planning commissions and with federal agencies such as the Veterans Administration and the Federal Housing Authority. There is, however, a small percentage of developers who do not work with these agencies or with the association, and one of the problems is that the association does not know who these persons are. Mr. Northway cautioned the committee that any legislation adopted should not restrict the freedom of owners of land to subdivide their own property.

Mr. Keith T. Koske, secretary of the State Real Estate Commission, stated that his office becomes involved with interstate as well as intrastate frauds and that subdivision sales do present a serious problem. Part of the problem is that any person can register as a subdivider under the present law. Also, when the licensing law was amended in the 1965 session to provide that only one license is needed by a developer, thereby providing coverage to all his agents and employees, the amendment did not specify who must register. Thus, a person who had previously been convicted of the fraudulent sale of securities applied for a license and, although the commission had no authority to deny him a license, it did so arbitrarily.

Mr. Koske suggested that the state should protect prospective owners of subdivision lots and it should protect against interstate fraud. Subdivision fraud is a national problem and a higher authority -- a state agency -- must be in a position to help the counties in this state where they cannot proceed alone.

## Consumer Credit Financing

Two aspects of consumer credit financing were specifically included in the study directives of House Joint Resolution No. 1024, 1965 session -- disclosure and amount of interest rates. In reviewing these matters, however, the committee agreed to consider the broader matter of the feasibility of codifying Colorado's various consumer loan and retail installment sales financing laws and the subject of consumer credit financing generally.

## Authorized Credit and Finance Rates in Colorado

Consumer credit is credit which represents all short- and intermediate-term credit used to finance the purchase of commodities and services for personal consumption or to refinance debts originally incurred for such purpose. On the national level, consumer credit, as of December 31, 1965, amounted to $85,983 million, most of which was in the form of installment credit (78.4 per cent) held by financial institutions (68.8 per cent) and retail outlets (9.6 per cent).[7] Similar statistical data for Colorado are not available, but, if these national percentages also apply to Colorado, figures for this state would roughly equal:

| | |
|---|---|
| Installment Consumer Credit | $664,000,000 |
| Noninstallment Consumer Credit | 182,900,000 |
| Total Consumer Credit | $846,900,000 |

Most of this installment credit is regulated under state law, while most of the noninstallment credit, i.e., single-payment loans of commercial banks and other financial institutions ($68.6 million), charge accounts of department stores, other retail outlets and credit cards ($66.1 million), and service credit ($48.3 million), is not governed by state law.

The extension of that portion of consumer credit in Colorado that is covered by state law is regulated under (1) the general interest rate law, (2) the two consumer loan laws,[8] (3) the industrial bank loan law, (4) the credit union loan law, and (5) the two installment sales law.[9] A comparison of these laws' maximum legal credit or finance charge rates, along with a brief description of each law's scope and the effective annual interest rates that these maximum legal credit or finance charge rates are calculated to yield, is presented in Table II.

Table II compares the legal maximum credit or finance charge rates, i.e., that rate which is quoted in the statutes, to the extent that they can be compared. Since Colorado's several maximum rates are stated differently -- e.g., a per cent per year, a per cent per month, a per cent per month of a portion of the extended credit, and a maximum dollar amount per each $100 per year of either

7. Survey of Current Business, Office of Business Economics, United States Department of Commerce, Volume 46, Number 2 (Washington: Government Printing Office, February, 1966), pp. S-17 & 18.
8. The Money Lenders Act of 1913, under which loans in excess of $1500 are made, is treated in this report as a consumer loan law.
9. Colorado has no usury law.

a portion of the extended credit or the total extended credit and based on the age of the automobile being sold -- and since one rate (industrial loans) can be computed as either add-on, discount, or unpaid balance, one rate (small loans below $1500) can be computed as either add-on or unpaid balance, three rates (simple interest, and the two installment sales laws) must be computed as add-on, and two rates (credit union loans and small loans over $1500) must be computed as unpaid balance, a more meaningful comparison of these legal maximum rates can be made if these rates are applied to a loan of, say $1,200 that must be repaid in one year in twelve equal and consecutive installments, and the amounts of credit dollars are compared. Even more meaningful is the effective annual credit rates of these legal maximum rates on the same hypothetical loan.

The effective annual credit rate in Table II is the approximate simple annual interest rate and would equal the quoted rate if the loan were a one-year, single-payment loan. However, the effective annual rate will always be higher than the quoted rate if the loan is an installment loan since the borrower or buyer pays a charge based on a calculation that 100 per cent of the principal will be available to him until the maturity date, which is not the case. In an installment situation, the borrower or buyer pays for the use of the principal for, say, one year, while in fact he has only 12/12ths of the principal for the first month, 11/12ths of the principal for the second month, 10/12ths of the principal for the third month, etc. The effective annual credit rate is a rate into which all quoted rates, i.e., add-on, discount, and unpaid balance rates, can be converted and then compared.

However, even this comparison of effective rates has limitations because two of the seven Colorado laws require different rates to be applied to different portions of the total amount of the extended credit, e.g., three per cent per month upon the first $300, 1.5 per cent per month on that portion between $300 and $500, and one per cent per month on that portion of the extended credit exceeding $500. Consequently, while the effective annual rates of some legal maximum rates will not increase or decrease if the amount of the loan is increased or decreased, effective annual rates of two legal maximum rates, those of the Personal Property Installment Sales Act and the Consumer Finance Act, are affected by the amount of the credit extended. For example, applying the legal maximum rate of the Consumer Finance Act upon a 12 monthly-and-consecutive-installments loan of $1,200 yields an approximate effective annual rate of 23.5 per cent. If the loan were reduced to $500, the approximate effective annual interest rate would increase to 31.7 per cent. The effective annual rate for a one-year $1200 installment loan or sale under Colorado's seven credit and finance charge rate laws varies from 11.1 per cent (the general interest statute) to 31.4 per cent (the retail motor vehicle installment sales act).

The effective annual rates presented in Table II are approximately minimum charges since they are computed on a principal that

has not been increased by the addition of filing and recording fees, credit insurance premiums, title abstract fees, etc. Except for the money lender's act, each of the seven laws permits the addition of various fees and costs incurred in the making of loans to the borrower.

## Evolution of Consumer Credit and Finance Laws

The history of Colorado's consumer-credit laws appears to be in harmony with what one author has stated about consumer-credit laws of all the states:

> Enactment of legislation relating to credit arrangements has not followed the pattern of expansion of the market. Regulation has been devised on an ad hoc basis to take care of problems and abuses or to clarify relationships as the need for such regulation became apparent, as in the case of small loans and retail installment sales described above. Various pieces of legislation were initially restricted in their application to particular institutions (e.g., industrial loan laws), to specific arrangements offered by particular institutions (e.g., installment loans by banks), or by the characteristics of the customers serviced (e.g., small loan laws). Although such legislation was amended from time to time for the purpose of updating, it nevertheless continued to remain specialized to a particular institution, arrangement, or class of consumer. In the same period, consumer credit expanded, the types of arrangements offered began to overlap in purpose and function, and the once sharp divisions among types of consumers serviced by particular institutions became blurred. Consumer credit, as an institution, thus evolved as a result of individual expansion of separate organizations engaged in offering a variety of consumer credit arrangements so that the services of such organizations eventually impinged upon each other in such a way as to form a network or aggregation of consumer credit services which could be identified generically as the consumer credit market. On the other hand, the initial compartmentalization of consumer credit has remained largely unchanged, although the content of regulation within specific categories has been revised from time to time.[10]

10. Barbara A. Curran, Trends in Consumer Credit Legislation The University of Chicago Press, (Chicago: 1965), p. 3.

TABLE II

SCOPE OF COVERAGE AND MAXIMUM LEGAL AND EFFECTIVE ANNUAL INTEREST RATES OF COLORADO'S CONSUMER CREDIT LAWS

| Law | Scope of Coverage | Maximum Legal Credit or Finance Charge Rate: Rate | Maximum Legal Credit or Finance Charge Rate: Required Method of Computation | Effective Annual Credit or Finance Charge Rate on Hypothetical $1200, 12 Monthly Installments, Maximum Legal Credit or Finance, Charge Rate, Loan[a] |
|---|---|---|---|---|
| General Interest Statute | Loans where interest rate is not agreed upon by the parties | 6%/year | Add-on | 11.1% |
| Installment Sales Laws: | | | | |
| Retail Motor Vehicle Installment Sales Act | Installment retail sales of motor vehicles | $8/$100/year - class 1 sales<br>$12/$100/year - class 2 sales<br>$15/$100/year - class 3 sales<br>$17/$100/year - class 4 sales | Add-on | 14.8% (class 1)<br>22.2% (class 2)<br>27.7% (class 3)<br>31.4% (class 4) |
| Colorado Personal Property Installment Sales Act | Installment sales of personal property | $15/$100/year - $0-$300 portion of credit<br>$12/$100/year - $300-$1000 portion of credit<br>$10/$100/year - $1000 and over portion of credit | Add-on | 22.9% |
| Small Loan Laws: | | | | |
| Consumer Finance Act | Loans under $1,500 for which interest exceeds 12%/annum | 3%/month - $0-$300 portion of credit<br>1.5%/month - $300-$500 portion of credit<br>1%/month - $500-$1500 portion of credit | Add-on or unpaid balance | 23.5% (add-on)<br>23.5% (unpaid balance) |
| Money Lender's Act | Loans over $1,500 for which interest exceeds 12%/annum | 2%/month | Unpaid balance | 24% |
| Credit Union Loans | Loans to credit union members | 1%/month | Unpaid balance | 12% |
| Industrial Loans | Loans to consumers | 10%/year | Add-on, discount or unpaid balance | 18.5% (add-on)<br>20.5% (discount)<br>10.0% (unpaid balance)[b] |

a. The rate of interest which is charged on installment contracts can be determined with a fair degree of accuracy through the use of the formula $R = \frac{2Ni}{P(n+I)}$ in which: R= effective interest rate; N= number of payment periods in a year; i= actual interest charges; P= net amount of loan or credit advanced; and n= number of payments to be made. For the purpose of this table, the statutory maximum of $1500 of the Consumer Finance Act is ignored.

b. Unpaid balance yield may not exceed that amount which may be yielded from add-on or discount methods.

On the national level, the National Conference of Commissioners of Uniform State Laws began a study in 1964 of the entire field of consumer credit for the purpose of drafting comprehensive uniform or model state legislation. In the words of one of the study's advocates, a reexamination and reappraisal is needed for several reasons:

1. Legislative regulation of consumer credit, whether by lenders or by vendors, is no longer experimental; consumer credit laws have been on the statute books long enough to warrant reexamination and reappraisal in the light of today's conditions and tomorrow's prospects;

2. Grantors of consumer credit are diversifying their fields of activity and becoming more and more alike; their operating costs and, ultimately, their charges to consumers will be minimized by applying the same rules to the different, yet similar, types of consumer credit they extend;

3. Some state court decisions threaten legal foundations of the consumer credit industry; and

4. Senator Douglas' so-called "truth in lending" bill and its companion House measures in the 88th Congress threaten federal invasion of state regulation of consumer credit.[11]

Curran, in her study of the consumer credit laws of the 50 states and Washington, D. C., divided the consumer credit laws into credit-process and noncredit-process classifications, and subclassified the former into five categories or credit-process phases: prenegotiation, negotiation, formalization, performance, and termination. Her description of each phase's regulations and legal prescriptions of the many state laws also applies to Colorado's consumer-credit laws:

> Regulation of the prenegotiating phase takes the form of prescriptions dealing with advertising used or other public statements made by credit institutions. It may be recalled that credit institutions are often prohibited from using misleading for false

11. Alfred A. Buerger, "The Uniform Law Commissioners' Consumer Credit Project," Quarterly Report, Volume 19 (Spring, 1965), pp. 46-47.

advertising relating to the nature or cost of credit arrangements. In addition, credit institutions may be required to post information in places of business showing both the cost of credit available and the institution's competence to engage in extending such credit.

Several aspects of the negotiating phase are regulated by statute. The competence of the credit institution to participate in the business of extending particular types of credit or to engage in extending credit at particular locations may be restricted or supervised under licensing provisions. To insure adequate exchange and disclosure of information relevant to the nature and scope as well as to the cost of the credit arrangement being negotiated, statutes may require the credit institution to give a written statement to a prospective obligor at the time that the credit arrangement is about to be formalized describing significant terms of the arrangement. Probably the most extensive regulations relate to the authorized terms of consumer credit arrangements under negotiation. Regulation of terms of consumer credit arrangements includes the establishment of maximum allowable credit or finance charges, maximum authorized duration of arrangements, and maximum principal amount permitted. Statutory provisions regulating maximum charges generally authorize the taking of special additional charges, including official filing and recording fees and insurance charges. The period and amount of installment payments to be scheduled under the arrangement are often regulated. The nature, type, and amount of collateral taken to secure the credit institution's interest in the contract may be subject to restrictions. For example, the taking of an assignment of future wages or power of attorney to confess judgment or appear for the obligor in legal proceedings may be prohibited or limited. Distinctions may be made between the permissibility of taking a security interest in real or in personal property. Various actions, such as arbitrary acceleration of the unpaid balance, waiving of the obligor's defenses or claims against the obligee or his successor in interest, or otherwise limiting the obligor's ability to enforce rights accruing to him under the arrangement or enlarging the obligee's remedies, may also be prohibited.

The format and style of instruments evidencing consumer credit arrangements negotiated may be specified in legislation relating to the formalizing phase of the consumer credit process. In

regulating format and style, statutes prescribe in respect to type size, headings, notices, and general information to be included in the contract. Emphasis is generally placed on those items relating to the cost of credit. Prescriptions relating to the execution of formal contract forms require that such documents be executed by both parties, or at least by the party to be charged, and that, at the time of execution, no blank spaces appear in such instruments. Delivery of copies of properly executed instruments to the obligor at about the time of execution is usually required. If the cost of insurance is to be assumed by the obligor, the contract must clearly show that to be the case, and copies of documents describing insurance coverage may be required to be delivered to the obligor by a specified time. The significance of acknowledgement by the obligor of delivery of properly executed forms may also be spelled out in statutory provisions. At the time of delivery of the formal documents, the obligee may also be required to deliver a statement describing in simple terms the nature of the obligation undertaken.

After the arrangement is executed, the obligor's responsibility is that of making installment payments as scheduled. Receipts for payment, particularly if made in cash, may be required. Refunds of unearned charges are required in some cases for payment of installments in advance of scheduled due dates. If the obligor is tardy in making payments, statutes which specify maximum credit or finance charges authorize the assessment of delinquency fees subject to specified maximums, or the taking of reimbursement for expenses incurred by the obligee in connection with collection or enforcement of payment provisions of the contract.

Many statutes also authorize additional fees for deferral, when permitted by the obligee, of one or more installment payments beyond the scheduled due date of such installments. Restrictions may be imposed on the obligee in respect to third parties to whom he may transfer the continuing arrangement. For example, only organizations licensed under applicable statutes may be competent to purchase or otherwise acquire such contracts.

Termination of arrangements through prepayment in full is almost universally regulated to the extent that the obligee is required to accept tender of such payment in advance and, whenever he accepts such tender, whether or not required to do so, he must make a refund of unearned charges. Such refunds are

generally calculated on the basis of the Rule of 78. Termination of arrangements by way of refinancing, or consolidation of a series of arrangements, is also regulated. In many cases, such contracts are treated as though they have been prepaid in full as of the date of refinancing or consolidation. Receipts for payment in full and cancelation of documents evidencing any security interest held by the obligee is almost always required.

Sanctions are imposed for violations of statutory prescriptions. Sanctions may be represented by revocation or suspension of license where a license is prerequisite to engaging in certain types of activity. Prohibited provisions or unauthorized contract terms and conditions may be designated as unenforceable if included in contracts contrary to statutory prescriptions. The inclusion of such terms may not otherwise affect the validity of the contract. Under some acts, violation of certain provisions, such as the maximum charge provisions, may operate to make the entire contract unenforceable by the obligee or his successor in interest. Many acts, however, provide for forfeiture of only the credit or finance charge or multiple thereof for violation of the maximum charge or other provisions of the applicable act. Criminal penalties ranging from nominal to substantial fines and imprisonment may be imposed for violation of statutory provisions.[12]

## Summary of Four Colorado Consumer Credit Financing Laws

In addition to the industrial bank law,[13] consumer credit financing in Colorado is generally governed by the provisions of four laws -- the Consumer Finance Act of 1965, the Money Lenders Act of 1913, the Retail Motor Vehicle Installment Sales Act of 1951, and the Personal Property Installment Sales Act of 1959. All of these laws are under the administration of the State Bank Commissioner.

Consumer Finance Act of 1955. Colorado's small loan law, applying to loans of $300 or less, was revised in 1955 to provide

12. Curran, op. cit., pp. 132-133.
13. The provisions of the industrial bank law were substantially rewritten in the 1965 session and were not included in the committee's initial consideration in 1965 and 1966 as to the feasibility of codifying Colorado's consumer credit laws.

for the licensing of persons making loans of $1500 or less at charges exceeding 12 per cent per year.[14] Exempted from the provisions of this act are banks, trust companies, savings banks, industrial banks, savings and loan associations, and credit unions, and none of these institutions may obtain a license as a consumer finance company.

The 1955 act authorizes the following maximum rates of charge: three per cent per month on the first $300 of the loan; one and one-half per cent per month on that part of the loan in excess of $300 and not exceeding $500; and one per cent per month on that part of the loan exceeding $500 but not exceeding $1500. These loans may be made on a per cent per month basis or charges may be precalculated. A penalty assessment may be levied by the lender of not to exceed two per cent per month of the amount in arrears.

If a loan is prepaid by cash, renewal, or refinancing within 60 days from the date the loan was made, the charge must be based on a per cent per month rate on the actual unpaid principal balance for the actual time outstanding. If such a loan is prepaid after 60 days, the Rule of 78ths may be used to compute the charges.

Lawful fees actually paid out by the lender to abstracting companies, public offices for filing and recording, etc., may be collected from the borrower or they may be included in the loan. In the event of a suit on a loan, the court may allow a reasonable attorney's fee to the lender, together with costs expended therein. On a foreclosure of a trust deed through a public trustee, costs of the foreclosure and a reasonable attorney's fee are permitted.

Only one loan by any one licensee is permitted to any borrower, and assignment of wages, salaries, commissions, or compensation for services rendered may not be taken to secure any loan under this 1955 act. Where a licensee makes excess charges on a loan, the licensee forfeits all charges under the act and, in addition, a fine of $500 may be imposed against the officers or employees who participate in the violation.

Since 1955, when the act was adopted, consumer finance loans in Colorado have increased from $26,559,377 to $95,522,459 in 1965, and the number of licensees increased from 266 to 423, as may be noted in Table III. For the 15-year period covered by the information in this table, not only did the total amount of loans increase greatly but the average loan made rose from $119 in 1951 to $490 in 1965.

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14. Appendix A contains a summary comparison of the Seventh Draft (1942) of the Uniform Small Loan Law with the 1943 Colorado Small Loan Law and the 1955 Colorado Consumer Finance Act.

Table III

NUMBER OF COMPANIES LICENSED UNDER CONSUMER FINANCE ACT AND TOTAL ASSETS, LOANS OUTSTANDING MADE UNDER THE PROVISIONS OF THE ACT, LOANS OUTSTANDING NOT COVERED BY THE PROVISIONS OF THE ACT AS OF DECEMBER 31 EACH YEAR, 1951-1965

| | Year | Number of Licensees | Total Assets | Loans Outstanding as of December 31 | | |
|---|---|---|---|---|---|---|
| | | | | Number of CFA Loans | Amount of CFA Loans | Loans, Discounts, Etc., Other Than CFA |
| | 1951 | 180 | $ 44,491,107 | 51,994 | $ 6,194,835 | $ 30,604,623 |
| a/ | 1952 | 193 | 53,117,848 | 54,965 | 7,454,259 | 37,434,832 |
| | 1953 | 187 | 49,517,664 | 62,985 | 9,460,674 | 32,426,137 |
| b/ | 1954 | 204 | 54,694,184 | 67,411 | 10,468,793 | 35,393,461 |
| c/ | 1955 | 266 | 70,307,287 | 83,230 | 26,559,377 | 33,466,505 |
| d/ | 1956 | 269 | 84,745,897 | 109,473 | 38,840,359 | 34,115,904 |
| | 1957 | 297 | 94,918,920 | 125,385 | 46,673,592 | 35,200,251 |
| | 1958 | 315 | 110,701,438 | 127,928 | 49,888,197 | 47,617,429 |
| | 1959 | 337 | 129,071,341 | 137,595 | 55,997,516 | 53,611,550 |

a/ In May of 1952 the Supreme Court ruled that the Money Lenders Act of 1913 had not been repealed.
b/ Interest rates in years 1954 and earlier under the Small Loan Law were 3½% per month on the unpaid balance not in excess of $150, and 2½% per month on any remainder of the unpaid principal balance, the maximum loan permitted being $300.
c/ The Consumer Finance Act became effective on June 1, 1955; all licensees operated under the provisions of the Small Loan Law prior to that date.
d/ During the years 1956 through 1965, interest rates under the Consumer Finance Act were 3% per month on that part of the principal not exceeding $300; 1½% on that part of the loan in excess of $300 and not exceeding $500; 1% per month on that part of the loan exceeding $500 and not exceeding $1,500, which is the maximum loan permitted.

Table III
(continued)

| Year | Number of Licensees | Total Assets | Loans Outstanding as of December 31: Number of CFA Loans | Amount of CFA Loans | Loans, Discounts, Etc., Other Than CFA |
|---|---|---|---|---|---|
| 1960 | 345 | $ 126,463,595 | 138,580 | $ 57,405,705 | $ 54,913,939 |
| 1961 | 343 | 124,743,796 | 146,101 | 61,331,138 | 49,667,559 |
| 1962 | 350 | 149,674,734 | 158,459 | 69,387,082 | 50,256,232 |
| 1963 | 383 | 159,409,273 | 175,260 | 79,123,815 | 56,848,270 |
| 1964 | 401 | 177,433,492 | 190,372 | 90,187,297 | 59,135,517 |
| 1965 | 423 | 191,338,994 | 195,117 | 95,522,459 | 73,063,504 |

Table Prepared by Colorado
State Banking Department

Money Lenders Act of 1913. The money lenders act regulates loans in excess of $1500 where the rate of charge is greater than 12 per cent per year. Under this act, the maximum rate of charge is two per cent per month on the unpaid principal balance and no other charges are permitted such as for recording fees, acknowledgment fees, commissions, brokerage fees, etc. However, attorney's fees and costs are permitted in the event of foreclosure of the security.

In the event of overcharges, treble damages are permitted to be recovered by the borrower of the amount above the rate authorized by law, and violations of this act are subject to a penalty fine of not less than $25 nor more than $500. The courts have interpreted this law to mean that any person making a loan, if the rate exceeds one per cent per month, is subject to its provisions even though the person is not engaged in the loan business.

Licensees under the money lenders act are not required to file annual reports so that no information is available as to the size or the number of loans made by licensees. The only figures available are the number of licenses issued, as follows:

| Year | Number of Licenses |
|---|---|
| 1952 | 192 |
| 1953 | 212 |
| 1954 | 234 |
| 1955 | 276 |
| 1956 | 222 |
| 1957 | 223 |
| 1958 | 246 |
| 1959 | 273 |
| 1960 | 292 |
| 1961 | 353 |
| 1962 | 367 |
| 1963 | 413 |
| 1964 | 419 |
| 1965 | 402 |

Retail Motor Vehicle Installment Sales Act. This act was adopted in 1951 with the primary purpose, according to the state banking department, to require a disclosure statement of the details of a purchase of a motor vehicle to the buyer, to require refunds in the event of prepayment, and to establish maximum rates of charges based on the age of a motor vehicle, as follows:

Class 1 -- Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made, $8 per $100 per year.

Class 2 -- Any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two years prior to the year in which the sale is made, $12 per $100 per year.

Class 3 -- Any used motor vehicle not in class 2 and designated by the manufacturer by a year model not more than four years prior to the year in which the sale is made, $15 per $100 per year.

Class 4 -- Any used motor vehicle not in class 2 or class 3 and designated by the manufacturer by a year model more than four years prior to the year in which the sale is made, $17 per $100 per year.

The act allows a minimum charge of $25 on any contract in addition to actual filing fees, cost of new titles, etc. A delinquency fee of five per cent of the installment in default may be levied after a payment is overdue by ten days.

State and national banks, trust companies, and industrial banks are not required to be licensed under the provisions of this law, but they are subject to other provisions such as the maximum rate that may be charged on the retail installment purchase of a motor vehicle. Consumer finance companies are not exempted from any of the provisions of this act.

Beginning with 1955, the first year usable figures are available, the number of licensees under the Retail Motor Vehicle Installment Sales Act has remained relatively constant -- 127 licensees in 1955 compared to 131 licensees in 1965.

Personal Property Installment Sales Act. In 1959, the General Assembly adopted a general law relating to installment sales of goods other than motor vehicles. Charge accounts, open accounts, and sales made where the title to the property or a lien on the property is not retained by the seller were exempted from the provisions of this act.

While no licenses are required by this act, the following maximum rates of charges -- "time price differential" -- apply to the retail installment sales coming under its provisions: On that part of the base time price of $300 or less, $15 per $100 per year; on that part of the base time price in excess of $300 and not exceeding $1,000, $12 per $100 per year; and on that part of the base time price in excess of $1,000, $10 per $100 per year. A minimum time price differential of $10 may be collected.

Insurance As Security For Loans. At the time the General Assembly adopted the Consumer Finance Act in 1955, it also enacted a law permitting the sale or procurement by lenders of life and health and accident insurance. The amount of coverage of this insurance on a borrower is limited by this law, and a lender may not

require a borrower to purchase insurance form the lender or from an agent, broker, or insurance company designated by the lender as a condition precedent to the making of a loan. Similarly, a lender may not decline existing insurance, if any, when the insurance is provided by a company licensed to do business in Colorado.

## Disclosure Provisions in Consumer Loan Laws of Colorado and Other Selected States

One of the specific directives to the Committee on Consumer Problems involved the disclosure of loan information to a borrower, especially with respect to the cost of the loan. As general background information for the committee, disclosure provisions in consumer loan laws of various states were reviewed to determine specific requirements advising borrowers as to the rate of interest involved in their loans. The state laws reviewed were largely selected on the basis of references contained in Curran's Trends in Consumer Credit Legislation[15] to obtain examples of language and provisions different from those in Colorado's consumer loan laws.

Disclosure Provisions -- Colorado. For comparison purposes, Colorado's Consumer Finance Act of 1955 contains the following provisions relating to disclosure of loan costs:

> 73-3-12. Advertising. -- (1) No licensee or other person subject to this article shall advertise, display, distribute, or broadcast or cause or permit to be advertised, displayed, distributed, or broadcast, in any manner whatsoever, any false, misleading, or deceptive statement or representation with regard to the charges for or terms of loans.
>
> (2) The commissioner may require that charges or rates of charge, if stated by a licensee, be stated fully and clearly and in such manner as the commissioner may deem necessary to prevent misunderstanding thereof by prospective borrowers. The commissioner may permit licensees to refer in their advertising to the fact that their business is under state supervision, subject to conditions imposed by him to prevent any erroneous impressions as to the scope or degree of protection provided by this article.

* * * * * * * * *

15. Curran, op. cit.

73-3-15. Requirements for making and payment of loans. -- (1) (a) Every licensee shall:

(b) At the time a loan is made within the provisions of this article deliver to the borrower, or if there are two or more borrowers to one of them, a statement in the English language on which shall be printed a copy of subsection (1) of section 73-3-14, disclosing the date of loan, name of person primarily obligated for the loan, name and address of licensee, amount of cash advanced to or upon behalf of borrower or borrowers, agreed rate or amount of charges, a schedule or description of the payments to be made and the type of security securing such loan, and the borrower's right to prepay. If insurance is procured by or through the licensee the aggregate costs thereof and type of coverages, shall, in addition, be shown in said statement. When precalculated charges are added to the amount of the loan, such statement shall also disclose additional charges, if any, which may be collected for delinquency and the borrower's right to refund or credit of a portion of the precalculated charges if the loan is prepaid in full.

* * * * * * * * *

(2) No licensee shall take any note or promise to pay which does not disclose the amount of the contract of loan, a schedule of payments, or a description thereof, nor any instrument in which blanks are left to be filled in after execution. No licensee shall take a note providing for judgment by confession thereon.

* * * * * * * * *

The following provisions apply under the Money Lender's Act for loans in excess of $1,500:

73-2-5. Interest rate. -- No person shall charge or receive a greater rate of interest upon any loan or upon any unpaid balance after any partial payment on any loan made by him than two per cent per month on the actual amount of the loan, and this charge shall cover all expenses, demands, and services of every character, including notarial and recording fees and charges, except upon the foreclosure of the security. The foregoing interest or foreclosure expenses shall not be deducted from the principal of loan when same is made. Every person conducting such business shall furnish the borrower at the time the loan is made, a written, typewritten, or printed statement signed by

the lender, showing, in English, in clear and distinct terms, the amount of the loan, the dates respectively when loaned and when due, the person to whom the loan is made, the name of the lender, the amount of interest to be charged, the rate of interest, the dates when the interest is payable, and a description or statement of the security by which the loan is secured, and the lender, at the time payments are made, shall give the borrower a plain and complete receipt for payment stating whether of principal or of interest, made on account of such loan.

As revised in 1965, Colorado's Industrial Bank Law provides:

14-17-7. Special Powers. * * * * * * (7) (a) Every industrial bank under this article shall in preparation for a loan being made by said industrial bank and before a note is signed, deliver to the borrower a statement in the English language on which shall be printed a copy of subsection (2) of this section 14-17-7 and include the following information:

(b) The date of the loan, the parties to the loan, the amount of cash advanced, the agreed rate and the aggregate amount of charges if paid according to the schedule of payments, a schedule of the payments to be made, the borrower's rights to prepayment, and a description of the security for such loan.

(c) If insurance premiums or any other charges are included in the loan, the statement shall disclose the amount thereof and any delinquency charges that may be made against the borrower.

* * * * * * * * *

14-17-9. Subject to corporation laws -- powers of commissioner. * * * * * * (9) Industrial banks in all their public advertisements shall use their full corporate name, and the corporate name therein displayed shall be in letters of the same size and prominence; provided, that the foregoing shall not be applicable to signs erected in, about, or upon the premises from which the operations of the industrial bank are carried on. No industrial bank shall advertise, display, distribute, or broadcast, or cause or permit to be advertised, displayed, distributed, or broadcasted, in any manner whatsoever, false, misleading, or deceptive statements or representations with regard to the charges for, or terms of, loans, or with reference to its savings deposits or investment certificates. The commissioner shall have the power to require that all advertisements of any industrial bank

be stated fully and clearly, and in such manner as the commissioner may deem necessary to prevent misunderstanding thereof by prospective borrowers, depositors, or purchasers of investment certificates.

Disclosure Provisions -- Selected States. In an attempt to provide committee members with examples of statutory language used in some of the other state consumer loan laws with respect to disclosure of interest rates, the laws in some 12 states were reviewed. In brief, examples were found of laws with provisions quite similar to Colorado's Consumer Finance Act, Money Lender's Act, and Industrial Bank Law. On the other hand, examples were also noted where the law requires disclosure of finance charges in terms of approximate effective annual or monthly rates of interest. Still other state laws provided lenders with the option of disclosing finance costs either in terms of dollar charges or in terms of approximate interest rates. Those states whose laws were reviewed and the pertinent provisions of their consumer loan laws are contained in the following paragraphs.

Alaska -- Section 06.200 provides that (b) "the department may require rates of charges stated by a licensee to be stated fully and clearly in the manner considered necessary to prevent misunderstanding by prospective borrowers." Under the provisions of Section 06.20.270, "every licensee shall...deliver to the borrower at the time a loan is made a statement containing a printed copy of sections 230-260 of this chapter in the English language and showing in clear and distinct terms the amount and date of the loan and its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and the licensee, and the agreed rate of charge; ..."

The foregoing two provisions are taken from the Small Loans Act of Alaska. Under Alaska's Money Lender's Act, Section 45.45.080 provides, in part, "advertising concerning such installment loans which contains a statement of an amount, or rate of charge, shall also contain the percentage rate, either per month or per year, computed on declining balances of the face amount of the loan instrument to which the charge would be equivalent if the loan were repaid according to contract. This advertising requirement may be complied with by stating the equivalent percentage rate which would earn the charge for a loan repayable in 12 consecutive monthly installments, and the stated rate may be closely approximate, rather than exact, if the statement so indicates. This requirement does not apply to an advertisement in which an amount, or rate of charge, is indicated only by a table which contains and is confined to examples of the face amount of the loan instrument, the proceeds to the borrower exclusive of the charge, and the amount, number and intervals of the required payments. The aggregate amount of unpaid principal due from any one borrower on one or more loans granted under (c) (3) and (4), and (d) of this section may not at any time exceed $3,500."

Hawaii -- Section 191A-2 provides that "Every creditor shall furnish to each person to whom credit is extended, before the

consummation of the transaction, a clear statement in writing setting forth...(f) the finance charge expressed in terms of dollars and cents or the percentage that the finance charge bears to the total amount to be financed expressed as a simple monthly or annual rate."

Illinois -- Under the provisions of Section 4a (1), "Advertising for loans transacted pursuant to this Section shall not be false, misleading, or deceptive. Such advertising, if it states a rate or amount of interest, shall state such rate as the dollar interest charge per $100 per year of the original principal amount (excluding interest) or the simple interest equivalent of such charge. No such advertising shall indicate or imply that the rates or charges for loans are in any way 'recommended,' 'approved,' 'set,' or 'established' by the State government or by this Act."

Indiana -- With respect to the law regulating small loan companies, Section 18-3003 provides: "Every licensee shall... deliver to the borrower, at the time a loan is made, a statement in the English language, showing in clear and distinct terms the amount and date of the loan and of its maturity, the name and address of the borrower and of the licensee and the rate of interest and the estimated dollar cost of the loan to the borrower according to the contract terms...."

Among the provisions relating to industrial loans and investment companies are these:

Section 18-3107. "...All instruments taken by any such company evidencing any loan of money made by it shall clearly state the rate of interest, discount, fee, charge, or other consideration therefor, including the additional interest, fee, or charge to be levied in case of delinquency of the borrower in meeting his payments thereon, and the amount of or basis for computing any refund due the borrower in case of prepayment...."

Section 18-3119. "...If any company refers in any advertising matter to the rate of charge upon loans to be made by it the department may require such company to state such rate of charge fully and clearly in such manner as it may deem necessary to prevent misunderstanding thereof by prospective borrowers...."

Iowa -- Section 534.14, concerning chattel loans, requires that "Every licensee shall...deliver to the borrower at the time any loan is made a statement...in the English language showing in clear and distinct terms the lawful maximum rate or rates of interest or charges in effect, the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the agreed rate of charge."

Installment loans by banks are regulated by Section 529.12 which provides, in part: "Any statement indicating the amount of the installment or the total charge in dollars required for any loan shall also state the percentage rate per year computed on declining balances of the original principal amount to which the total charge would be equivalent if the loan were repaid according to the contract. The percentage rate stated may be closely approximate rather than exact if the statement so indicates."

Minnesota -- Under the provisions of Section 56.12, "the commissioner may require that rates of charges, if stated by a licensee, be stated in such manner as he may deem necessary to prevent misunderstanding thereof by prospective borrowers" so far as advertising is concerned. The written statement provided each borrower is to include "the agreed rate of charge" among other things (Section 56.14).

Nebraska -- Nebraska is reported to have adopted a truth-in-lending bill in 1965 that is applicable to disclosure of interest rates in consumer loans. The Attorney General of Nebraska reported the following at the 1965 conference of the National Association of Attorneys General:

"Mr. Meyer: I might say that the Nebraska Legislature within the last two weeks adopted a truth in lending bill requiring the precise interest rate to be set forth in the contract. There was some question about the language in the statute, and our office was asked about it by the Department of Banking. We took the position that the language of the statute required the precise interest rates to be set forth in the contract, and that it was not adequate to say in the contract that 'this contract is written within legal limits.' In other words, they must set forth exactly the rate that the individual is being charged." 16

New Hampshire -- The law in New Hampshire requires the following pertaining to disclosure of finance charges: "Any person engaged in the business of extending credit shall furnish to each person to whom such credit is extended, concurrently with the consummation of the transaction or agreement to extend credit, a clear statement in writing setting forth the finance charges, expressed in dollars, rate of interest, or monthly rate of charge, or a combination thereof, to be borne by such person in connection with such extension of credit as originally scheduled." (Section 399-B:2)

16. 1965 Conference Proceedings, National Association of Attorneys General, The Council of State Governments, 1313 East 60th Street, Chicago, Illinois, p. 50.

New Mexico -- So far as the New Mexico Small Loan Act of 1955 is concerned, Section 48-17-41 (b) requires that "each licensee shall display in each licensed place of business in a place where it will be readily visible by borrowers a full and accurate schedule of the rates of charges upon all classes of loans currently to be made by him, stated on a per cent per annum basis and also on a per cent per month basis." Similarly, charges on loans made under this act must be expressed "in every obligation signed by the borrower on a per cent per month and also on a per cent per annum basis" (Sec. 48-17-43 B(2) ). This provision is repeated in Section 48-17-44 in that, at the time any loan is made, a written statement must be furnished the borrower disclosing in clear and distinct terms "the agreed rate of charge stated on a per cent per month and a per cent per annum basis and the amount in dollars and cents."

With respect to advertising under the 1959 bank installment loan act, Section 48-21-7 states: "Any advertising concerning such installment loans which contains a statement of an amount, or rate of charge, shall also contain the percentage rate, either a month or a year, computed on declining balances of the face-amount of the loan instrument to which such charge would be equivalent if the loan were repaid according to contract; Provided that this requirement may be complied with by stating the equivalent percentage rate which would earn the charge for such a loan repayable in twelve equal, consecutive monthly installments, and such stated rate may be closely approximate, rather than exact, if the statement so indicates; and Provided further, that this requirement shall not apply to an advertisement in which an amount or rate of charge is indicated only by a table which contains and is confined to examples of the face-amount of the loan instrument, the proceeds to the borrower exclusive of the charge, and the amount, number and intervals of the required payments."

North Dakota -- Under the small loan law of North Dakota, "in the event charges are calculated and charged on a dollar per hundred basis, the loan shall be repayable in substantially equal periodic installments of principal and charges, and the annual percentage simple interest equivalent shall be conspicuously stated in the note or small loan contract executed in connection with the loan" (Sec. 13-03-14). Also, at the time of making a loan, the licensee must provide the borrower with a statement, showing in clear and distinct terms, "the annual simple interest percentage that is equivalent to the total of all charges that are made" (Sec. 13-03-15).

South Dakota -- The Installment Repayment Small Loan and Consumer Finance Act of South Dakota provides licensees with the option of providing borrowers with a written statement of "the agreed charge expressed either as an aggregate annual percentage rate or as an unaggregated combination of annual percentage rates or as a total dollar figure without reference to any period of time" (Sec. 6.04B25).

Wisconsin -- The small loan law of Wisconsin requires that the written statement provided borrowers by licensees include "the agreed rate of interest or charge per annum clearly and plainly expressed as nearly as such rate of interest or charge will permit" (Sec. 214.13). Under that state's installment loan law, however, "the statement shall also indicate the percentage per annum of interest charged in the transaction" (Sec. 115.09 (8) (a) ). This same law also requires that "any advertisement which states or gives the amount of the charges or the amount of an installment shall also state and give the amount of the charge in terms of percentage per annum of simple interest" (Sec. 115.09 (5) (c) ).

## Consumer Finance Rates Compared

Much of the interest with respect to consumer financing centers on the rates charged for consumer loans. Table II, discussed previously, contains the calculated effective annual rates of interest under the various Colorado consumer finance laws based on the allowable statutory maximum charges, but how do Colorado's statutory rates compare with similar rates in the other states?

A comparison of consumer financing rates among the several states involves some problems since, for example, under the small loan laws, the states have formulas or schedules which vary as to the amount of the loan and the interest rate which may be levied and, also, the states have different provisions concerning additional charges which may be collected on a small loan. Similarly, so far as motor vehicle installment sales laws are concerned, some state laws express the amount of the time price differential in dollars per hundred, as in Colorado, while other states base this charge on a percentage figure, and the states use different classifications concerning the age of the motor vehicle. Consequently, any summary comparison of the rates alone should be accepted with some reservations as to depicting the actual costs for consumer financing in any one state.

With these reservations in mind, based on the rates reported in Trends in Consumer Credit Legislation,[17] Colorado's maximum rate on small loans is no higher than those maximum rates in 17 other states and are less than those in four states -- Alaska, Hawaii, Louisiana, and Wyoming, but maximum charges are less in ten other states where these rates are levied on a per cent per month basis. On the other hand, Colorado's maximum rate for motor vehicle installment sales of $17 per $100 per year is reported to

17. Curran, op. cit., pp. 158-166, for small loans; pp. 256-269, for motor vehicle installment sales; and pp. 270-277, for installment sales of other goods.

be higher than any other state in the nation on the basis of a rate expressed in dollars per hundred, and Colorado's maximum rate of $15 per $100 per year on retail installment sales of other goods is also the highest such rate among the states.

## Summary of Meetings

The advisability and feasibility of consolidating Colorado's consumer credit laws to obtain uniform provisions as well as a greater understanding thereof was the subject of several committee meetings. As a preliminary step, the committee held a conference on the general subject of loan disclosure requirements, interest rates, and other finance charges. Following this meeting, the committee directed the preparation of drafts of bills combining the Consumer Finance Act of 1955 and the Money Lenders Act of 1913 into one proposed law and the Retail Motor Vehicle Installment Sales Act of 1951 and the Personal Property Installment Sales Act of 1959 into another proposed law. A series of meetings was held by the committee to review and revise these drafts and their contents before taking any final action.

Conference on Loan Disclosure and Finance Charges. The committee's conference on loan disclosure requirements, interest rates, and other finance charges was held on April 29, 1966. A summary of the comments and presentations made at that time are contained in the following paragraphs.[18]

Mr. Harry Bloom, State Bank Commissioner, after reviewing the various consumer credit laws under his jurisdiction, commented that industrial banks in the outlying areas of the state generally charge lower rates of interest than do those in the Denver metropolitan area. In some areas of the state, industrial banks seldom make a loan using the discount method of interest computation, and industrial banks are improving their advertising practices, primarily as a result of direct departmental persuasion and personal contact.

So far as credit life insurance is concerned, Mr. Bloom reported that the department had agreed to the using of the Rule of 78ths when rebates are to be made since this point is not covered by the statutes; however, about 25 per cent of the industry does not use this formula. Credit life insurance rebate or premium problems must come to the state bank department, but the Insurance Commissioner has indicated to the State Bank Commissioner that he will revoke licenses where there are abuses involving a financial

18. A limited number of copies of the minutes of this meeting, as well as most of the other meetings of the committee, are available and may be obtained from the Legislative Council Office, Room 341, State Capitol.

institution whose staff members are authorized to act as credit life insurance agents.

Mr. Bloom felt that the state's two loan acts -- the Consumer Finance Act and the Money Lenders Act -- and the state's two retail installment sales acts could be consolidated, but he did not think it would be so desirable to consolidate all of the laws concerning loans to consumers because each finance industry deals with a different segment of the population. Credit unions, for example, lend at lower interest rates than do industrial banks, and commercial banks usually lend to persons who represent the lowest borrowing risk segment of consumers.

Mr. Bloom concluded his remarks to the committee by expressing his preference for a higher add-on rate together with the abolishment of the discount method of computing interest and his belief that competition keeps actual interest rates down within the industry. He pointed out that the money lenders act had not been amended since it was enacted in 1913 even though economic conditions have changed considerably since that time.

Mr. Ted Neiswanger, president of the Longmont Industrial Bank, provided committee members with relatively detailed information on the operations of his bank. He stated that the officials of the Longmont Industrial Bank do not have, nor do they want to have, a small loan license under the consumer finance act. Mr. Neiswanger felt that the companies in the industrial banking field should declare themselves either as an industrial bank or as a finance and small loan company since he did not think it possible to be both.

So far as disclosure is concerned, Mr. Neiswanger reported that, at the time of closing a loan, the customer is given a detailed loan statement showing the gross amount of the loan, payment schedule, cash advance, cost of insurance, filing fees, interest charges and investigation fees, the rate of interest charged, expressed in a percentage figure, and a general description of the security for the loan. In addition, the customer is shown an adding machine tape of the same information, which also provides details as to any money paid in his behalf, such as payoffs on cars, furniture, or other loans. Occasionally, the charges, interest, or disbursement of the funds are questioned by the borrower, and it is the bank's policy to explain these to the customer's satisfaction before the loan is completed. Mr. Neiswanger added that he could not recall an instance where the customer had refused the loan after his questions had been answered, and only on a very few occasions has the bank had a customer return days or weeks after the loan was made to complain about the interest or some other aspect of the loan.

Mr. Neiswanger stated that a simple adjustment of interest rates is not the answer to any confusion on the part of consumers; the answer lies in the education of consumers. He said that he would not object to being required to state the simple interest

rate on all notes if all the other of his competitors also were required to do this.

Following the presentation of his statements, and in response to several committee questions, Mr. Neiswanger said that (1) the presence or absence of credit life insurance in a loan made by the Longmont Industrial Bank does not affect the rate of interest; (2) the bank often charges the investigation fee as allowed by law but these investigations are usually not made; (3) the investigation fee is now actually an "acquisition" fee which enables the bank to make smaller loans profitable; (4) the bank does not buy installment sales paper even though this paper yields a higher effective rate of interest than can be included in industrial bank loans; (5) the bank usually lends at an eight per cent add-on rate for loans over $500 and at a ten per cent add-on rate for loans under $500; and (6) it is possible to state interest on a note in terms of annual simple interest but the actual dollar amount of interest cost is more significant to a borrower.

Mr. Bernard Valdez, manager of welfare for the City and County of Denver, reported his belief that the present laws of Colorado and the lack of protection for people who are not sophisticated borrowers cause many of them to become victims of poverty. He estimated that 50 per cent of the men who become unemployed are deeply in debt, and these men have less than average earning capacities. The welfare department in Denver often gets these types of cases and they often result in bankruptcy. Many welfare recipients, because of their family's size and the low amount of their income, can never pay off their debts. The only alternative is to clean up their financial problems through the bankruptcy route and start them all over again. Mr. Valdez introduced three unemployed consumers who testified as to their particular consumer problems in line with the previous comments made by Mr. Valdez.

Mr. Gene Markley, representing the Colorado Automobile Dealers Association, expressed the association's pride in the fact that it cosponsored and worked hard for the passage of the present retail motor vehicle installment sales law. The association believes this law to be as good as any and better than most similar laws in other states. The disclosure portion is clear and understandable, and there are no minimum rates and the maximum is sufficient to provide for the poor credit risks.

Mr. Markley felt that, even if the automobile dealers were to employ mathematical experts, their task in converting time price differentials to simple interest terms would be nearly impossible in many instances where, for example, irregular payment schedules were to be made under the contract. He suggested that the better and more understandable manner to present information on the cost of the installment purchase is that which is provided under the present law in terms of actual dollars. As to rates, Mr. Markley said that competition for finance paper among the commercial banks, industrial banks, finance companies, and credit unions is as fierce as the competition for the sale itself, and the associa-

tion believes that this competition to lend to the qualified borrower will do more to same the consumer money than any legislation that could be passed.

In concluding his remarks, Mr. Markley said:

"Finally, gentlemen, I would like again to call your attention to the keen competition in the automobile business and the automobile finance business. As you no doubt know, this is a business wherein we experience a higher dollar volume of sales with a low net profit figure. The past two years show an average net per dealership of 1.8 per cent of the sales. In 1963 it was 1.9 per cent, 1962 was 2.2 per cent, 1961 was 1.3 per cent, 1960 was .5 per cent, 1959 was 1.4 per cent, and 1958 was .2 per cent. This figure includes finance and insurance income within the dealerships and is net profit before income tax payments.

"Our businesses must have some profit to survive. If any of you have purchased new cars in recent years, and I'm sure you have, I'm confident you did not expect to pay the full Federal or Monroney Label price. This Monroney Label, incidentally, is another example of dealer-sponsored legislation to protect the consumer from 'packed' prices on new automobiles. But again in regard to your car purchase, I doubt that you would expect to pay an eight to 12 per cent rate if you were to finance. Actually, some of our dealers advertise that they will sell and finance this car on an interest free basis. They do this and still stay within the federal price label. Other dealers advertise a ridiculously low price on their product. But no dealer does both and stays open. The point I'm making is that it is difficult with the keen competition today for the consumer not to get a 'Good Deal.'

"The vast majority of today's consumers reap the benefits from competitive businesses free from government intervention."

Mr. Ben Fishman, a consumer representing himself, explained problems he had encountered with respect to a Denver real estate company and recommended the following proposals:

"1. No real estate company should escrow money (insist on a third party by law).

"2. All their costs and charges should be listed and inventoried.

"3. If they want to secure their loans with additional advance payments for future taxes and insurance, these monies should draw an interest credited to the borrower.

"4. Every contract should have all the charges typed up, even though the actual merchandise is sometimes left off; it should include the merchandise though. Then the borrower can have most of the story and can accept or reject before signing the contract.

"5. This should apply to out-of-state companies or lenders as well."

Mr. Roden Rogers, executive vice president of the Colorado Consumer Finance Association, informed the committee that the consumer finance industry "favors full disclosure to the customer, that the Colorado statutes we operate under already require it in written or printed form, that we favor disclosure in dollars, not the Douglas plan of a true annual interest rate which has great practical difficulties in its application and is widely opposed by business." With respect to rates, Mr. Rogers said that "with the exception of the 1913 Money Lenders Act, we, as an industry, endorse the present Colorado statutes as right and fair for both Colorado consumers and Colorado lenders. You know our recommendations on the 1913 Money Lenders Act since we assisted in the preparation of an excellent modern bill covering loans over $1500, which the House of Representatives killed by impractical amendments in early 1965."

Mr. Rogers also stated that, generally speaking, a maximum rate of charge established by law must be great enough to pay the expenses of furnishing the service being charged for and to leave a reasonable profit for the business endeavoring to furnish it to the public. If consumer financing is needed and is desirable, both socially and economically, by and for the people in Colorado, then a rate must be allowed that will achieve the income required to provide this type of financing. He added: "Another important factor that must not be overlooked is that this is a maximum rate you are considering and it must be high enough to take care of the marginal risk or that share of the community you feel needs this service available. When the maximum rate is too low, those first to shut off from legitimate sources of credit or loans are: those with irregular seasonal employment; those with only fair paying habits; and those without stable residence."

In closing his remarks, Mr. Rogers cautioned committee members not to be "swayed by isolated, specific cases of problems and heartache occurring under a particular law. Millions of credit transactions are closed each year in Colorado. Our industry accounts for over 300,000 itself. If 100,000 of these have been injured and are complaining, the fence needs mending; but if the number is only 500 or even 1,000, one-sixth or one-third of one per cent, it must be something other than omissions in the law. Specific cases, especially with great emotional appeal, can be very misleading evidence where such a large segment of the community is concerned."

Mr. Helmuth Miller, rate analyst for Beneficial Management Corporation, reviewed the history of small loan legislation in this country and the necessity for having this service, especially for skilled, semi-skilled, and unskilled workers. After stating that, to his knowledge, in the 50 years of its development there has never been a repeal of a small loan law of the type sponsored jointly by the Russell Sage Foundation and responsible elements in

the consumer loan field, Mr. Miller commented that there have, however, been a number of attempts to reduce rates drastically. "In the three states in which drastic rate reductions were made -- New Jersey, Missouri, and West Virginia -- the legitimate lenders did abandon the field and the loan sharks swarmed back in. As a result of this experience, each of these state legislatures found it necessary to reenact rates sufficiently high to attract back the legitimate capital which had left."

So far as loan operations are concerned, Mr. Miller said that operating a small loan company is a high-cost business. In effect, the borrower is buying money at retail -- money which the loan company acquired at wholesale through the sale of stocks, bonds, bank borrowings, and retained earnings. Moreover, the borrower is not only buying money at retail, he is also buying that money on the installment plan. Thus, the costs incurred in servicing such a borrower embrace not only the normally higher retail costs -- in this case the cost of lending relatively small sums to relatively large numbers of borrowers -- but also the particular cost factors inherent in buying anything on an installment basis.

Mr. Miller summarized various recent studies on the cost of providing consumer credit. He said that the certified public accountant firm of Touche, Ross, Bailey & Smart had recently completed a study of almost two million charge accounts for the National Retail Merchants Association which showed a loss of $1.82 for each revolving credit account even though customers pay charges of one and one-half per cent on monthly balances, or an effective interest rate of 18 per cent per year. A recent compilation by Dun & Bradstreet shows that all industry as a group had a gross mark-up of 28.82 per cent, compared with Beneficial's nationwide gross of 23.03 per cent and a Colorado gross of 24.34 per cent; however, in the retail area, where Mr. Miller felt comparisons would be more appropriately made, general merchandise stores and department stores show an average mark-up of over 35 per cent; apparel and accessories, 34.6 per cent; furniture stores, 33.6 per cent; jewelry stores, 44.16 per cent, and so on. A 1959 study by Stanford Research Institute entitled "Composite Earnings Performance of the Major Consumer Finance Companies" includes a table where the earnings of 35 major industries are compared on the basis of total capital employed. This table shows that the consumer finance industry ranked near the bottom -- 31st out of the 35 industries researched.

In the case of consumer loan companies, Mr. Miller said, "the gross charge for money whether at wholesale or retail may be likened to the mark-up on any other commodity which is sold at a profit in a competitive market. It is still a question of economics and the charge has the same basic job to do: (1) get back the cost of the commodity; (2) reimburse all costs incurred in selling and servicing the commodity; (3) produce a fair net profit on the total working capital or assets used in the business.

"The consumer finance business has all the cost factors in common with other retail establishments like salaries, rent, light,

advertising, taxes, license fees, printing, postage, and the like, as well as costly investigations and collection activity.

"Then there is the element of risk. In a cash merchandise sale, the transaction is finished when cash is exchanged for the merchandise. The mark-up has been fully received. In an installment purchase, part of the price, in most instances, is received through a down payment. In addition, service charges are usually added for the privilege of paying in installments or the so-called cash has an adjustment in it to cover installment costs. In any event, the actual capital in jeopardy in relation to the face amount of the obligation is considerably less than in a direct loan transaction.

"In the consumer loan business, it is 100 cents on the dollar which is in jeopardy -- plus other costs which are not in that 100 cents. Those costs you hope to get back out of a 'mark-up' yet to be collected."[19]

Mr. Paul Moo, general counsel to Associates Investments Company and affiliated with the National Conference of Commissioners on Uniform State Laws, outlined the general progress being made in the drafting of a comprehensive, uniform law that would consolidate most of the states' consumer loan laws, estimating that this draft would be completed by 1968 or 1969.

Dr. Harold Wolf, professor of finance at the University of Colorado, stated that the philosophy behind the small loan law is to protect the public. The public, it is held, is less well informed about financial institutions and about money and credit than about other things. Therefore, the public needs more protection when borrowing money than when buying most commodities. For example, in many cases the user of consumer credit does not know what interest rate he is paying. He knows only he paid so much down and then so much a week or month. A legal ceiling on interest, then, does provide the consumer with some education.

Dr. Wolf said that it is relatively easy to disguise the true interest cost of credit, and relatively hard to educate the public in the field of finance. If people in general could be educated to the point where they could calculate the true interest cost on borrowed funds, many of the problems involved in consumer credit regulation might actually disappear. Presumably if people were aware of what they were paying for borrowed funds, they would shop around for the lowest rates available. Then competition among the lenders would make legislation much less necessary.

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19. Part of Mr. Miller's presentation included an analysis of yield under the maximum rates authorized in the Colorado Consumer Finance Act. This analysis is contained in Appendix B.

Dr. Wolf concluded his remarks by saying that, while generally higher interest rates are warranted on consumer loans than on business loans, many people no doubt pay higher rates than their credit ratings dictate. He believed there would be little effect on the finance industry if all lenders were required to disclose the simple interest rate for all loans.

Dr. Henry Kester, also of the University of Colorado and appearing before the committee as a representative of the industrial bank industry, commented on the cost characteristics of consumer installment lending, on the range of service required in consumer installment lending, and on the necessity for maintaining the various types of consumer lending institutions currently found in the state of Colorado.

Among other things, Dr. Kester said that "the relationship between level of service and the rate of charge is possibly more critical at the moment in the consumer credit industry than at any other time in its history. With the current intense competition for capital in all kinds of businesses, as well as the growing alternatives for the employment of capital, one can question seriously if lower rates of charge for consumer loans is really in the best interests of the consumer borrowers. Competition for capital is so keen today that particular care is now required not only to keep the capital currently employed in this industry, but, also, to attract additional capital into it to meet the growing needs and increasing numbers of consumer borrowers. Accordingly, one can argue that it is probably in the interests of the borrowers more than any other individual or group to maintain the current rates of charge in this industry."

In regard to the range of services required to meet the needs of consumer borrowers, Dr. Kester stated that "there are borrowers who need small amounts of money for short periods of time; there are others who need large amounts of credit for long periods of time; there are those needing credit for emergencies over a wide range of time; and many borrowers need to consolidate uncontrolled debts into a manageable plan for repayment. All of these borrowers, and there are, of course, many other kinds of need, require personal service, and I do not know of any individual lender or type of lending institution capable of meeting all of these needs. Accordingly, the consumer credit industry has grown into several different, as well as distinct, businesses; and it seems fair to state that recognizing this fact would require the maintenance of regulations which would allow for differences in the amounts of personal service required to meet the needs of all borrowers most efficiently."

Dr. Kester ended his comments by concluding that "the consumer credit borrower needs the different lending institutions we now have in this state, if he is to find adequate alternatives to meet his own growing and changing credit needs. One can submit, therefore, that a reduction in the rate of charge for consumer installment loans in the state of Colorado is less than likely to be in the real interests of consumer borrowers in this state.

The consumer credit needs here are likely to grow rapidly both in total amount and in the kinds of loans desired. Our present financial institutional structure can meet consumer credit needs as they appear, and thereby contribute its full share to the great growth potential we both anticipate and want in the state of Colorado."

Mr. Rynie Doherty, representing the Colorado Industrial Bankers' Association, presented the committee with a brief history of consumer finance services in this country and the role of industrial banks in this movement. Mr. Doherty pointed out that criticism of the finance industry is usually based upon the maximum amount of charges permitted, but he felt a realistic yardstick would be the effective rate of charges which he said is much less than the maximum since the business is highly competitive. In this connection, Mr. Doherty reported the following statistics for the return on net worth for the finance industry:

| Source | |
|---|---|
| First Nat'l Bank of Chicago (Avg. 1960-1964) | (a) All reporting consumer finance companies 11.57% |
| | (b) All reporting sales finance companies 7.76% |
| Bank of New York (1965) | (c) Independent sales finance companies 8.18% |
| | (d) National sales finance companies 10.70% |
| Cont. Illinois Nat'l Bank (1965) | (e) Sales finance companies 8.2% |
| | (f) Consumer finance companies 11.% |

Mr. Doherty expanded on the significance of these figures by saying that, "after reflecting the ultimate effect upon net profits because of the recent increased cost of money (based on 60 per cent borrowing at a 25 per cent cost increase), the corresponding percentages of return on net worth as shown above would be (a) 7.23%, (b) 5.85%, (c) 5.11%, (d) 6.69%, (e) 5.13%, and (f) 6.88%, or an average return on net worth for the total group of 6.14%. This compares to national banks' net income after taxes of 10.2% to total capital accounts for banks with ten million to fifty million dollars in assets (from the Tenth Federal Reserve District operating ratios, 1965)."

Mr. Doherty suggested that "these figures readily show the reason investors are becoming very discouraged with their investments in the finance industry. This trend, if allowed to continue, will cause the return of the high-rate, outside-of-the-law lender

that flourished before farsighted legislators enacted fair laws. The trend is very apparent in Colorado, where many independents have been forced to liquidate their finance offices or sell to national companies whose size enables them to operate more efficiently and obtain funds at lower costs. It would indeed be unfortunate if only a few companies or tax-free institutions could operate under the law. Many needy people would find themselves without a source of funds because of the selective, non-competitive atmosphere that would prevail."

Mr. Melvin Coffee, a Denver attorney, discussed the following conclusions with the committee:

(1) The present system creates confusion and doubt in the mind of the small loan borrower as well as in the mind of his advisor.

(2) The average small loan borrower cannot know the true cost of his loan. In a word, present law encourages deception of the borrower.

(3) The present consumer finance laws are unfair to the borrower.

(4) Corrective legislation is urgently needed to codify consumer lending laws in order to preserve the original purpose of the laws.

In his comments, Mr. Coffee said: "Not only do the mechanics of the statutes breed confusion, but, even more important, they condone terms which can have no other effect than to mislead the average small loan borrower. One would think that six per cent is six per cent is six per cent. Not so when some statutes permit discounting, others permit add-on, and others permit precalculation on the unpaid balance. Discounting and add-on effectively double the simple interest rate. There is no reason why the rate of interest should not be made known to the borrower -- rate of interest expressed in terms of simple annual interest on the unpaid balance of his loan. To tell a person he is to pay ten per cent when he is really paying 20 per cent simple interest is wrong. Yet this is exactly what our statutes encourage for industrial banks...

"Not only are the rates deceptive, the amount of the loan is also deceptive. If a borrower walks away from the finance office with $500, one would reasonably think he has borrowed $500. Some of the statutes permit no additional charges, some permit insurance and filing fees, some permit flat amounts of service fees to be considered 'loaned' to the borrower on which interest can be charged. Consider for one moment the gall of the statutes. The buyer is paying a higher rate of interest presumably because he is a poorer risk, then the statute keeps the higher interest rate, permits the security to be increased to the status of a bank risk

and then charges the borrower not only to increase the security of the lender, but also to charge the borrower interest for the increased security given to the lender."

In conclusion, Mr. Coffee said that, "as has been stated, the original purpose of small loan laws was to keep loan sharks out of the community. It was determined that an individual temporarily in dire need of funds should not be forced to pay 'unfair interest' or be subject to 'unfair collection methods.' It was determined that the individual should be able to go to a regulated lender whose fees would be known in advance, fair to both the lender for the risk of the loan, and fair to the borrower. Perhaps it is due to our changing society, perhaps it is due to an unawareness of the public, but for whatever the reason I believe that the consumer finance laws should all be codified in such a manner that the regulated lender is permitted a return which will justify the risk, so that the cost of borrowing in terms of dollars and simple annual interest is known to the borrower in advance of his obligating himself, so that maximum rates, methods of computing the money or credit advance, will be uniform regardless of the type of agency which advances the credit, and so that service fees or additional costs are deemed to be a part of the cost of doing business. In a sentence, the average borrower should know the true cost of borrowing money."

Review of Bill Drafts. Bill drafts combining the Consumer Finance Act of 1955 with the Money Lenders Act of 1913 and the Retail Motor Vehicle Installment Sales Act of 1951 with the Personal Property Installment Sales Act of 1959 were reviewed and discussed at committee meetings held on July 26-27, August 26-27, and September 14, 1966.

The State Bank Commissioner suggested several changes designed to tighten administration and supervision of the consumer finance industry. Among other things, the commissioner suggested that the consumer finance law should provide for a maximum rate of interest that may be charged after the maturity date of a loan; for the collection of examination fees by the banking department when special examinations must be made; for basing all charges on twelve 30-day months, or a 360-day year, except on interest-bearing notes; for minimum capital requirements which must be met before a license may be issued; for the collection of an extension or deferment charge; for requiring refunds of insurance premiums on loans prepaid or renewed before additional insurance is written on new loans; and for a prohibition of recasting of precalculated loans on an interest-bearing basis except through renewal on an interest-bearing note.

Concerning the money lenders act, Mr. Bloom suggested reporting requirements should be provided; the two per cent per month rate should be reduced to a maximum of one and one-half per cent on the unpaid balance; actual out-of-pocket expenses for filing or releasing mortgages, abstracting, etc., should be allowed, to be

collected at the time the loan is made; and the provisions pertaining both to secured and unsecured loans should be clearly stated.

In addition, the State Bank Commissioner also reported that Colorado is "without legislation in the area of loan brokerage in the consumer finance sphere of lending. A further development or extension of this practice could be a means whereby a lending institution, in collusion with another organization or individual, might circumvent existing statutes and in effect extract from the borrower additional fees and charges, adding to an already very high rate of interest on a loan...The suggestion could follow that perhaps this particular type of activity within the consumer finance area might be either regulated by new legislative enactment or by amendment to existing laws." Mr. Bloom also commented that the consolidation of the two lending acts will result in reduced license fee receipts to the department of some $23,000 per year and suggested that the single license fee under the consolidated draft be increased to offset this reduction.

Mr. R. W. Turner, Jr., of Durango, appeared before the committee on behalf of consumer finance companies operating on the Western Slope. Mr. Turner summarized his comments by saying that: (1) Because of the high cost of money today, consumer finance companies do not feel that a rate cut is appropriate at this time; (2) the companies are concerned about not allowing attorney's fees in cases of litigation, pointing out that the consolidated proposal includes loans in very large amounts of more than $1500; (3) consumer finance companies are also concerned about losing the principal when a mistake is made in a loan and they feel that this would be too severe a penalty, adding that there could be collusion between an employee and a borrower to defraud a company under this penalty; and (4) the companies are also concerned about not allowing a lender to earn commissions on the sale of credit life and health and accident insurance.

Mr. Richard Tucker, of Tri-State Finance Corporation, Denver, commented that:

(1) His is not a large finance company and it has to borrow money to make loans, and the company is paying higher interest on this money than are the larger finance companies. As of now, the opportunity exists for starting small finance companies, but the bill draft, in reducing allowable monthly interest rates from two per cent to one and one-half per cent, would make it inoperable for his company, and it would thus force the small companies out of business.

(2) With respect to commissions on insurance, Mr. Tucker stated that consumer finance companies rely very heavily on these as part of their operating profit; at the same time, this insurance protects the consumer by not leaving a widow saddled with debt.

(3) Intent is sometimes very hard to prove, Mr. Tucker said, and voiding the principal of a loan is simply too strong a

penalty provision. He added that insurance companies who lend money to small companies such as he was representing look very hard at a state's loan law, and this proposed provision would cause them to look unfavorably on any additional financing of small loan companies in Colorado.

Mr. Rogers, executive vice president of the Colorado Consumer Finance Association, provided the committee with a number of changes proposed by members of his association after having reviewed the two bill drafts. As part of his comments regarding the consolidated consumer finance bill, Mr. Rogers said: "I would pass on to you a suggestion as to rate structure for this bill that has been recommended by many of our members. Interest costs on borrowed money have risen three times since last winter. Wages, rents, supplies, and other costs are similarly rising at a steady rate. Reducing the maximum rate permissible under these conditions can only result soon in removing many lower income and less stably employed persons from access to this source of money and credit. Remember this -- the consumer finance business was originally established to service this working-man class. Since its establishment in 1916, rates of interest or the cost of this service has been held at the same or a slightly lower level, while costs of doing business have risen four times."

The rate suggested was as follows: Option A -- three per cent per month on the principal not exceeding $300, one and one-half per cent per month on the amount of the principal exceeding $300 but not exceeding $500, and one per cent per month on the amount of the principal exceeding $500 but not exceeding $1500; and Option B -- one and three-fourths per cent per month on loans where the principal totals more than $1500. In this manner, Mr. Rogers said, since the effective monthly interest rate on a loan of $1500 under Option A is 1.78 per cent, a smooth transition would be produced at the $1500 level for loans under Option B in excess of $1500.

In concluding his remarks, Mr. Rogers said that he believed the four current Colorado acts covering consumer lending and retail installment sales are adequate until these acts can be perfected or a really good uniform credit code is produced by the national committee that has been working on this job for more than a year. Because of the complicated features involved, he did not believe that a proper job could be done on the committee's drafts in the limited time available.

Mr. Morton Scult, executive vice president and general counsel of Business Factors, Inc., of Phoenix, Arizona, reported on the activities of his company's operations in financing small businesses throughout the state of Colorado under the provisions of the 1913 money lenders act and, while approving the concept of consolidating consumer loan laws, expressed his concern that this attempt may inadvertently work to cut off needed funds to small businesses. He suggested that the provisions in the bill draft should not be applicable to loans to small businesses that are made on the basis of

accounts receivable, inventory, etc., or where loans are not made to consumers. He pointed out that circumstances here differ from those in consumer loans since businessmen as such have the ability to evaluate the costs of loans before making them.

Mr. Dwight A. Hamilton of Denver, one of the commissioners from Colorado on the National Commission on Uniform State Laws, said that a committee appointed by the commission had been working on the preparation of a uniform consumer credit code for three years and that a draft of this code had been presented for the first time at the commission's 1966 annual meeting. The proposed draft is not intended to control specific institutions; rather it is intended to replace present state installment sales laws, small loan laws, and usury laws. The second tentative draft of the committee, which will be based on comments and criticism on the first tentative draft, is planned for completion and presentation to the 1967 annual conference of the commission. He thought the uniform draft would be promulgated in the 1967 meeting, adding that there is talk about a federal law on this matter which is a reason for urgency for states to adopt uniform legislation. He urged that committee members slow down for a year and wait for the completion of the uniform draft before taking any action in regard to consumer loan legislation for Colorado.

## Door-to-door Sales

The distribution of production is normally accomplished by three principal methods or forms of merchandising: indirect or retail-store sales, mail order or catalog sales, and direct sales. Each of these forms of merchandising, in some fashion, is and has for decades been affected by state and local law. For example, Colorado's present transient dealer licensing law, section 85-2-1 et seq, dates back to 1911.

The direct or door-to-door seller, however, differs from the indirect and catalog sellers, from the consumer viewpoint, in at least two ways. First, the door-to-door seller is in a more favorable competitive position since he pays little or no property taxes; has few, if any, overhead expenses; and pays few, if any, license fees. Since the direct seller has lower overhead costs than his competitor who maintains a permanent business location, the prices of the direct seller's products can be expected to reflect his lower costs, and his price position among his competitors can be expected to be superior. Second, and probably most important to the majority of consumers, the possibility of correcting problems involving product misrepresentation, nondelivery of products, etc., is less than if the seller had a permanent location. This is not because the direct seller is less honest than his competitor who maintains a permanent place in the community, but only because the public has long felt that direct selling, since it cannot be so easily regulated by market-force decisions, such as

individual boycotts, should be regulated by law. The rationale for licensing is that if a transient merchant is licensed, a defrauded consumer can more easily discover where he can locate the merchant.

## Current Colorado Provisions

The two methods by which transient selling is regulated in this state are through state statutes and municipal ordinances.

State Law. Article 2, Chapter 85, C.R.S. 1963, as amended in 1964, requires each transient dealer, i.e., any person, either principal or agent, who engages in the non-interstate commerce business of traveling about carrying with him for sale and selling manufactured goods, wares, or merchandise, to be licensed by each county in which he wishes to engage in his business.[20]

In order to receive a county license, the transient dealer must apply to the county clerk and pay a license fee that depends upon how the dealer will travel within the county. The dealer's application must be in writing and must state:

1. his name;
2. his address;
3. whether he transacts business as a principal or an agent, and, if as an agent, the name, residence, and place of business of his principal;
4. the kind or class of goods, wares, and merchandise he proposes to sell as a transient dealer in the county; and
5. the particular manner in which he proposes to travel in that county as a transient dealer.

The application must be accompanied with a county license fee computed as follows:

20. A copy of this article is included as Appendix C.

| How Dealer Intends to Travel Within County | Amount of Fee |
|---|---|
| On foot | $ 15 |
| On a bicycle or tricycle | $ 25 |
| By carriage or other vehicle and drawn by one horse or other animal | $ 50 |
| By carriage or other vehicle and drawn by two or more horses or other animals | $ 75 |
| By automobile, motorcycle, or other self-propelling carriage | $ 100 |
| In any other manner | $ 125 |

The county license is nontransferable, void after the expiration of one year from the date of its issuance, and must be exhibited to every peace officer who demands to see it.

Municipal Ordinances. The second of the two Colorado regulatory tools is the municipal ordinance. Section 139-32-1 (63), C.R.S. 1963, gives towns and cities the authority to regulate or prohibit door-to-door sellers. According to a 1963 Colorado Municipal League survey, most of Colorado's municipalities had ordinances in effect at the time of the survey which regulated peddlers, solicitors, etc., and most of these these ordinances closely resembled the Green River Ordinance. A typical Green River Ordinance reads as follows:

> The practice of going in and upon private residences in the City (Town) of ______________ by solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise, not having been requested or invited so to do by the owner or owners, occupant or occupants of said private residences, for the purpose of soliciting orders for the sale of goods, wares, and merchandise, and/or peddling or hawking the same is declared to be a nuisance, and punishable by ________.

## 1965 Colorado Legislative Proposals

During the 1965 legislative session, two attempts were made to curb alleged abuses of door-to-door selling. House Bill 1439 and Senate Bill 185 intended to regulate door-to-door sellers more severely; each failed to become law.

House Bill 1439, as introduced, was intended to amend the state's transient dealer licensing article, 85-2-1 et seq, by:

1. changing the present definition of a transient dealer to

   > ...any person, either principal or agent, who engages in the business of traveling about selling or soliciting sales of manufactured goods, wares, merchandise, or services to any ultimate consumer in his home. It shall also include any door-to-door salesman, but shall not include any person who delivers such goods as newspapers, milk, or bread, where the delivery of such goods and merchandise is on a regular route and pursuant to a weekly or monthly order or subscription, paid for by the week or month and for which no written contract is made.

2. repealing the fee schedule and providing that the county license fee would be $25, regardless of how the dealer intends to travel within the county;

3. requiring additional information to be contained in the written application, including the applicant's:

   a) age;

   b) business address;

   c) business telephone number;

   d) type of business; and

   e) nature of the goods or services to be sold;

4. requiring the county clerk to investigate to determine the truth and accuracy of the application, and not to license the applicant unless the application is truthful and accurate; and

5. raising the penal fine contained in the article's penalty section from $10 to $100 to $100 to $300.

In addition, House Bill 1439 would have amended section 85-2-11, the article's false advertising section, to reflect the charges described above, and would have added a new section that would have:

1. permitted a purchaser to avoid any sale or contract for

sale made by the dealer if the dealer were not licensed; and

2. prevented a purchaser's contract from being assigned or negotiated if it did not contain the transient dealer's name, county license number, and the name and number of his principal, if he were an agent.

Prior to being postponed indefinitely in the Senate Judiciary Committee, House Bill 1439 was amended to require the license to be issued by the Secretary of State rather than the county clerks.

Senate Bill 185, as introduced, was intended to be new, rather than amendatory, law, and would have permitted purchasers of goods and services bought in their homes to void their contracts. This bill exempted contracts of insurance, corporate shares, investment fund certificates, debentures, or intangibles of any kind or nature, or live animals, and would have permitted the buyer to notify by mail the seller and the Secretary of State that he, the buyer, had decided to withdraw from the contract, and that the contract was null and void. The notice's post mark would have decided the time of mailing, and the Secretary of State's receipt of the buyer's notification was to have been considered conclusive proof of compliance with the act.

Senate Bill 185 also provided that (1) the above information was to have been contained in the contracts in size no smaller than the contract's largest type; (2) all such contracts were to contain a space relating to time, date, and address of residence where signed; and (3) contracts made in violation of the bill's provisions would have been considered void.

Prior to being postponed indefinitely in the House Business Affairs Committee, Senate Bill 185 was amended so as to exclude contracts of intangibles of any kind or nature, and to include contracts of real property and any fixtures attached thereto, and contracts involving any agricultural products except food.

Laws of Other States

A survey of the statutes of the 49 remaining states indicates that most state laws attempt to deal with only one of the problems caused by the presence of door-to-door salesmen, that of the greater possibility of fraud and misrepresentation, and that most of these states approach this problem in the same fashion as does Colorado. The major exception to this is the 1966 law adopted in Massachusetts.

In most of the states, as is the case in Colorado, the state statute calling for the licensing of door-to-door salesmen is administered and enforced on the local level, usually by county

officials. Occasionally, a state statute will require licensing both by the state and by a county. For example, a door-to-door salesman in Hawaii must be licensed by the state, and he must show this license and pay the county fee to the county officials before he can engage in business in the county. Alabama, on the other hand, requires transient vendors to pay one license fee, a portion of which is state revenue and the balance of which is county revenue.

In addition, many states require transient salesmen, peddlers, solicitors, etc., to be licensed and to post a bond, usually with a state official, and usually in the amount of $500 to $1000. These bonds are held most often by the person with whom they have been filed for a period ending 60 days after the expiration of the peddler's license. During this 60-day period, this bond is subject to attachment, garnishment, and execution in behalf of creditors whose claims arise in connection with the seller's business transactions within the state.

A small number of states have laws designed to deal with both the problems of fraud faced by consumers and "unfair" competition faced by retailers with fixed places of business. These states, like Connecticut, require the itinerant vendor to pay a municipal license fee, in addition to the state license fee and bond, in an amount that is either fixed by the municipal authority or in an amount equal to the taxes assessable in the municipality under the last preceding tax levy therein upon an amount of property of the same valuation as that to be sold by the transient merchant, the method to be selected by the municipality. Other states have licensing fees that are so high, such as Iowa's $25 per day fee and Wisconsin's $100 per day local license fee for transient merchants, as to indicate that the statutes are intended to eliminate rather than regulate door-to-door selling. A few states provide only that regulation of door-to-door sales is a power that municipalities have.

With respect to Massachusetts, a comprehensive act regulating retail installment sales was enacted during the 1966 session (House No. 3272). Under the provisions of this act, a retail installment sale agreement, except when it provides for the payment of the time sale price in not more than three monthly installments and the finance charge does not exceed one dollar with the seller retaining no collateral security, may be cancelled by the buyer:

"When, there not having been receipt or tender of a substantial part of the goods, services, or goods and services which the seller is required to furnish under a retail installment sale agreement, or under a copy of the agreement, signed by the seller which has been consummated by a party thereto at a place other than the address of the seller, which may be his main office or branch thereof, the buyer, not later than five o'clock postmeridian on the next business day, may notify the seller of this desire to cancel and such cancellation shall be effective thereupon."

The act goes on to provide that "notice of cancellation under this section shall be given to the seller at the place of business of the seller as set forth in the agreement and in the event that the buyer is unable to contact the seller, the buyer's evidence of a reasonable attempt to contact said seller shall suffice." It further provides, among other things, that "the buyer shall incur no additional liability for cancellation pursuant to this section."

The new Massachusetts law did not go into effect until November 1, 1966, so that actual experience under the act's provision will not be available for some time yet.

## Summary of Meetings

The regulation of door-to-door selling was the topic of consideration by the committee at several of its meetings, with especial attention being given to this at the meetings held on July 12 and August 27, 1966.

At the July 12th meeting, both of the sponsors of the legislation proposed in the 1965 session were present to discuss their bills. Senator David J. Hahn, author of Senate Bill 185, which was intended to provide for a 72-hour contract cooling-off period for buyers in certain direct sales situations, explained that he felt direct sales made in homes should be considered in a different light than other types of sales. Psychologically, a person feels more secure in his own home than when he is involved in arm's length dealing at a merchant's place of business. Also, many homeowners are not in a mood to bargain; they may agree to a purchase and sign a contract merely in order to rid themselves of the salesmen. He added that his conclusions resulted from six years of experience in the District Attorney's Office in Arapahoe County.

Senator Hahn did not agree with the philosophy contained in the Green River Ordinance that treats taxpayer merchants of a community as better quality citizens than sellers who are not taxpayers within the community. In S.B. 185, he tried to hit the transaction where it is most vulnerable to cover situations where (1) the buyer signs a note, (2) the note is immediately negotiated, and (3) the buyer thereby loses his right to a remedy from the seller. The 72-hour cooling-off period would tie up the negotiation of the paper and, if there is fraud, the purchaser would have time for recourse. He added that he had no objection to a dollar limitation being placed in his bill and that, since he felt the quick negotiation of the promissory notes was the problem, he had no objection to limiting his bill only to negotiable promissory notes.

Representative Darrell J. Skelton, author of House Bill 1439, 1965 session, pointed out that Colorado has a law at the

present time that should be enforced. H.B. 1439 was designed to modify this present licensing law by excluding newsboys and by including sellers of services as well as goods and unsuccessful as well as successful salesmen. He felt the first thing that should be done is to obtain an opinion from the Attorney General as to the constitutionality of the present law and, if held to be constitutional, this law should be fully enforced.

Representative Skelton reported that contracts signed in the home where fraud was involved should be voidable, as they are, but that this provision should be contained in the law so that courts would not have to rule that such contracts are void. This situation costs a defrauded purchaser too much time and money. In addition, as would have been provided in H.B. 1439, identification of door-to-door salesmen should be required at each home that is visited; this is especially important in view of the fact that so often only minor children are home at the time a salesman calls.

Mr. Arsene Denoyer, representing the American Textbook Publishers Institute, said that the 105 members of the institute collectively account for more than 90 per cent of the volume of all published educational material used in homes, schools, and libraries in this nation. Approximately 95 per cent of all educational encyclopedias and allied books and services are sold directly to the home, in what is commonly known as door-to-door selling. Statistical surveys reveal that, in 1965, educational reference book publishers in Colorado and those located in other states had a total sales volume of $475,000,000.

In describing the need for this activity, Mr. Denoyer said: "The value of an encyclopedia in the home is widely acknowledged by school officials, librarians, and parents. Yet, very few families ever exercise the initiateive on their own to acquire an encyclopedia. Not until a representative of an encyclopedia publisher calls at the home will the family be willing to make this important commitment to the furtherance of their children's education. Very few purchasers of encyclopedias pay cash -- less than ten per cent."

Mr. Denoyer stated that the educational reference book industry itself guarantees consumer protection through its own policy of self-regulation. This is called the Subscription Book Publishers-National Better Business Bureau-Participating Chambers of Commerce Cooperative Program and includes 49 encyclopedia distributing companies, all of the 121 better business bureaus in the country, and almost 950 chambers of commerce. Under this program, all inquiry and complaint statistics are reported to the National Better Business Bureau by participating chambers of commerce and local better business bureaus. Since embarking on this program about 15 years ago, the volume of business has quadrupled while, according to the National Better Business Bureau, the complaint curve has moved down sharply.

Mr. Denoyer said he was convinced that self-regulation does work, and he reported that in Colorado the Denver Area Better Business Bureau and the following chambers of commerce participate in the joint program: Climax, Canon City, Craig, Grand Junction, LaJunta, Leadville, Longmont, Loveland, Pueblo, Rocky Ford, Salida, Sterling, and Trinidad. He felt that in Colorado, as well as the nation, there are plenty of state laws and federal governmental agencies to protect the citizens from wrong-doers.

Mr. Donald Dulek, president of the Colorado Association of Direct Sales Companies and Denver district manager for Watkins Products, reported that each of the 25 association members is pledged to:

(1) Protect the rights of free men to engage in legitimate business.

(2) Promote a spirit of fellowship among members.

(3) Open the public's eyes to the true concept of direct sales people through better public relations.

(4) Help expose the methods of unscrupulous persons engaged in direct sales.

Mr. Dulek said that recruiting new sales people is the lifeline of the direct selling business and that it is a big job for all direct sales managers to find qualified sales people without the added burden of a state license. He pointed out that H.B. 1439 contained a three-dollar license fee for each direct sales person in Colorado, adding that "there are many Colorado people engaged in direct sales who do not regularly earn three dollars per week in profit. That type of licensing fee would certainly put them right out of business."

Continuing, Mr. Dulek stated, "It is true that there are undesirable people in the direct sales field. Other businesses and professions suffer from these same problems. Lawyers, doctors, to name only a few, suffer from unethical persons. We feel it is unfair to single out direct sales for restrictive legislation. The door-to-door sales person is not the 'fast buck, foot-in-the-door' type of individual you have often heard about. They are people who, for the most part, work and live in the community where they sell. There are few, if any, direct sales companies who do not depend upon repeat sales. Because of dependence upon repeat business, you will find all reputable direct sales companies ready to satisfy any customer complaints. The United States Chamber of Commerce and the National Better Business Bureau are both on record opposing the policy of restrictive legislation."

Mr. H. A. Schatz, manager of marketing and public relations, direct sales division, The West Bend Company, stated that many of the members of the Colorado Association of Direct Sales Companies

have been in business for as long as 100 years and offer services that the retail merchant cannot provide. These firms can demonstrate their products in the privacy of a housewife's home, and often the entire family enters into the decision to purchase the product. Direct selling is still confused with the itinerant seller, but most salesmen live in the communities in which they sell.

In regard to the provisions of S.B. 185, Mr. Schatz said that the ability to rescind a contract tends to dilute the importance of an agreement and the importance of the signature which is the basis of contractual proceedings. Such a provision would lessen the responsibility of persons signing contracts and signatures will be placed on contracts by buyers just to get rid of salesmen, with the contracts being voided later.

So far as H.B. 1439 is concerned, Mr. Schatz commented that the association is opposed to state as well as local licensing and, if a state licensing law were enacted, it would work so that it would not preempt local licensing ordinances. Also, the proposed state licensing fee of three dollars would soon rise to ten, 20, or 25 dollars.

Mr. Vic Miller of Denver, a wholesale distributor for Tupperware, which uses a home-party plan for making sales, said that the three-dollar license provision would be detrimental to the company's sales program. Since the sales people are not limited to specific territories, one salesman could be in Denver in the morning, in Boulder in the afternoon, and in Littleton in the evening, for example. This person would be subject to a three-dollar state license and to local municipal licenses. The result would be a recruitment problem since many of the company's would-be sales people may not want or be able to make this preliminary investment in licensing fees. He stated that he could agree with a state licensing program only if it superseded municipal licenses. With respect to the cooling-off period, Mr. Miller commented that this would cause a whole lot of evils from competitors attempting to undercut one seller's sales contract and a seller would not know, when he left a home, whether he had a contract or not.

Mr. Norman Mahoney, sales supervisor for Kirby Vacuum Cleaners, reported that, on August 26th, his company had sent out a policy statement to all offices that if disagreements could not be settled within 24 hours, the agent was to take the product back and cancel the order. He continued by saying that the type of legislation proposed in S.B. 185 and H.B. 1439 is not necessary because finance companies will not handle the paper for operations where there are continuing complaints from their customers. He concluded by saying his point was that national organizations are aware of this problem and want to satisfy their customers.

Mr. Kenneth Selby, counsel for Airway Sanitizer and other direct sales companies, reported that his clients were in favor of

a cooling-off period, but the proposal as drafted provides for a wholly unilateral situation and this should be changed so that the provision applies to customers as well as to sellers. In other words, some statutory authority should be included whereby the signers of these contracts should honor their terms if they do not decide to cancel within the cooling-off period. This provision should also include a very carefully prescribed list of reasons for voiding the contract after the cooling-off period expires.

## Preneed Funeral Plans

Senate Bill 239, 1965 session, which resulted from a 1964 study by the Legislative Council Committee on Consumer and Funeral Problems, transferred the administration of the law regulating preneed funeral plans in Colorado from the State Bank Commissioner to the State Insurance Commissioner. Among other things, this bill also expanded the contracts covered under its provisions to include merchandise and services and revised the contents of these contracts to enable a purchaser to understand better what he is contracting for.

Mr. J. Richard Barnes, State Commissioner of Insurance, met with the committee on May 20, 1966, to review the progress made and problems encountered since the 1965 changes had taken effect. Mr. Barnes reported that there were 44 preneed funeral plan companies and 187 agents currently licensed. Of these 44 companies, ten actively solicit preneed funeral contracts while the remaining 34 merely accept funds upon request. He said that six other companies were in the process of securing licenses under the preneed law.

In regard to the administration of the law, Mr. Barnes informed the members that one senior investigator on the department's staff had spent almost full time visiting every preneed licensee in the state in order to explain the provisions in the law following the 1965 amendments. Department personnel have also appeared on the program at the following conferences:

(1) Mid-Winter Meeting, Colorado State Association of Funeral Directors and Embalmers;

(2) State Convention, Colorado State Association of Funeral Directors and Embalmers;

(3) Tri-State Conference of Monument Workers of America;

(4) Kiwanis Club, Conifer, Colorado; and

(5) Kiwanis Club, Evergreen, Colorado.

Numerous investigations have been conducted regarding activities of licensees in response to complaints from contract purchasers. The department was successful in obtaining a court injunction

prohibiting the sale of contracts by one company who felt that it was exempt from the provisions of the law. The department also conducted three informal hearings to determine the mode of operation for three companies, and a regulation is under consideration that would require written contracts by all preneed funeral plan companies.

Mr. Barnes stated that one aspect which had not yet been fully implemented involved the audit or examination of the many preneed funeral plans. The insurance department plans to check each plan at least annually, but it cannot audit a plan more often than once a year unless there is a problem. Audits need to be made of these plans for the past few years which means that costs for the first year's audits will be high.

In regard to administrative costs, Mr. Barnes reported that expenditures for the current fiscal year (1965-66) amounted to $11,700 for the first ten months, but that this total was misleading since the department had been unable to fill one investigator position for this program. He estimated that the program would cost the department $21,817 for fiscal year 1966-67 and that license receipts for the same period would total $6,160, or less than one-third of the expected expense.

Mr. Barnes suggested that several sections of the law need clarification, as follows: Section 14-19-2 (1), C.R.S. 1963, relating to the definition of a person, should include the plural of each of the enumerated titles to prevent circumvention of the law by the use of memberships on dual contracts. Section 14-19-2 (7), C.R.S. 1963, defining a trustee as a chartered state or national bank, presents a potential problem in rural areas where no such banks are located, and this might be alleviated by allowing savings and loan associations to utilize these trust powers. Section 14-19-7 (4), C.R.S. 1963, concerning liquidated damages, does not, as now written, encourage the seller to urge the continuation or completion of the preneed contract, and the provision would be more workable if the figure for damages were changed from 15 per cent of the contract price to 15 per cent of the amount paid by the contract purchaser.

In addition, Mr. Barnes said that the word "advisors" is being utilized in conjunction with funeral membership plans, and this practice will present a problem in the future and could be a violation of the law covering licensed funeral directors and embalmers. He also stated that the department needs criteria other than the usual conviction-of-a-felony guideline in order to refuse granting a license to certain questionable applicants. Mr. Barnes concluded by saying that he would like permission to fingerprint applicants as this would be a very effective method to verify an applicant's statements, but the Federal Bureau of Investigation will not make a fingerprint check for a state agency unless this permissive authority is in the state agency's law.

## Consumer Bankruptcy in Colorado

"In 1965, a record total of 180,323 new bankruptcy cases was filed [In U. S. District Courts] as compared to 171,719 cases filed during 1964, an increase of 8,604 cases, or five per cent. This makes the thirteenth consecutive year in which the number of cases filed exceeded the total for the previous year."[21] This increase was not uniformaly spread among the ten judicial circuits or among the districts within each circuit. In the Tenth Circuit (Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming) filings rose 6.3 per cent while the number of new cases filed in Colorado increased from 3,877 (fiscal 1964) to 4,267 (fiscal 1965), an increase of 390 cases, or 10.1 per cent.

Most of the 4,267 petitions filed with the Clerk of the U. S. District Court in Denver during fiscal 1965 were voluntary petitions, filed by the insolvent debtor himself; only 14 petitions, or .3 per cent, were filed by the creditors of a debtor.

Of the 4,253 voluntary petitions filed during fiscal 1965 in Denver, 3,796 cases were classified as straight bankruptcy petitions, 439 cases were classified as Chapter XIII's, and the balance were Chapter X's.[22] The broad occupational classification for the straight voluntary bankrupts is as follows:

| | | |
|---|---|---|
| Business: | | |
| Merchant | 102 | |
| Manufacturer | 19 | |
| Others in Business | 308 | |
| Total Business | | 429 |
| Non-business: | | |
| Farmer | 14 | |
| Employee | 3,203 | |
| Others Not in Business | 574 | |
| Professional | 33 | |
| Total Non-business | | 3,824 |
| Total | | 4,253 |

21. Administrative Office of the United States Courts, Tables of Bankruptcy Statistics, Fiscal Year 1964-1965.
22. A "straight bankruptcy" or "bankruptcy" is a procedure to discharge debts; a "Chapter XIII" is a wage-earner plan, and allows a wage earner, under court supervision, to pay his debts rather than have them discharged; and "Chapter X" is a corporate reorganization procedure.

During the same 12-month period for fiscal 1965, 3,848 straight bankruptcy cases were concluded in Denver. This number includes 101 cases dismissed for miscellaneous reasons, and 1,244 asset, 1,301 nominal, and 1,202 no-asset cases concluded. (Asset cases are cases in which some distribution was made to creditors; nominal cases are cases in which all the assets are consumed in the paying of costs of administration; and cases in which no assets are available for distribution are called no-asset cases.)

The U. S. Constitution bestows upon Congress the power to establish "uniform laws on the subject of bankruptcies throughout the United States." Despite this constitutional grant of power to Congress and despite congressional enactment of a uniform bankruptcy law, however, bankruptcy rates differ between circuits and districts within a circuit. These interdistrict and intercircuit rate differences reflect the differences in state laws pertaining to the amount of assets which may be exempted from use in satisfying creditors' claims, the differences in state laws pertaining to wage garnishment, the differences of business and the extension of lender and vendor credit, and, to a lesser extent, the differences in attitudes among attorneys, consumers, and bankruptcy court officials.

While the uniform federal bankruptcy law regulates the procedure by which exemptions are claimed and exempt property is set apart for the debtor, for example, bankruptcy courts must follow state law in determining what property is exempt: "This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the laws of the United States or by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile."[23] Each state, of course, has different exemptions. In Colorado, a debtor is entitled to exempt the first $250 worth of his wearing apparel, the first $100 of watches, jewelry, and articles of adornment, one burial site, as well as other exemptions.

It was the rise of the rate in Colorado bankruptcies and the belief of the committee that much of the rise in the rate is the result of state law that prompted the committee to undertake a study on the causes of bankruptcy.

## Background

Generally, the bankruptcy laws of the United States have two main purposes: (1) to secure the possession of a debtor's assets and procure their equitable division among creditors, preventing and avoiding attempts of one creditor to obtain unfair advantage

23. Section 6, Chapter 3, Title 11, U.S.C.A.

over other creditors therein, and (2) to liberate worthy debtors from the burden of unpaid debts. The words "equitable" and "worthy" have not always had the meaning now ascribed to them, however.

## Its Objectives

The Bankruptcy Act of 1898, as substantially amended in 1938, constitutes the essential bankruptcy laws of today. Although several major congressional enactments preceded the 1898 Act, the latter rewrote the law and is the basis of most of the law today. This 1898 Act, initially designed to deal with business failures by encourageing risk taking in fields of low or unproved productivity, described the procedure by which:

(1) the assets of an insolvent could be possessed, either upon his own initiative or upon the initiative of his creditors if the insolvent performed certain acts, designated as "acts of bankruptcy" which demonstrate that he is unworthy or incapable of properly continuing his business.

(2) the assets that may have been fraudulently transferred to third parties, unfairly transferred to particular preferred creditors, or possessed by creditors while the debtor was insolvent, may be recovered.

(3) the assets may be sold and the sale proceeds distributed fairly among the insolvent's creditors.

(4) the insolvent is legally discharged from his unpaid debts, if he has given all his assets and disclosed the truth about his business to his creditors.

Over the years, however, employee or wage earner petitions began to represent a growing proportion of the petitions filed. In 1938, Congress passed the Chandler Act, one of the 1898 Act's major amendments, which represented a growing belief that wage earners should be treated differently than business bankruptcies. This act allows employees who are insolvent debtors to commit themselves to pay their creditors, in whole or in part, out of their future earnings. It was thought at the time that most wage earners, given the choice of electing a more dignified method to pay creditors without risking their possessions, would choose this method, known as Chapter XIII. However, Chapter XIII plans require frugality and determination to implement and terminate, and few consumers actually choose this plan. Of the voluntary petitions filed during fiscal 1965 in Denver, 10.3 per cent were Chapter XIII plans.

## Bankruptcy Procedure

Every debtor is eligible to become a bankrupt and an applicant for discharge from his legal obligations. Any debtor who files with the Clerk of the U. S. District Court of the district in which he has resided for six months, or for a major portion of the six months, a Statement of Affairs and Debtors Petition and pays, or promises to pay in two future installments if he claims to be a pauper, a $50 filing fee to the clerk is immediately adjudged to be a bankrupt, and immediately thereafter is recognized as an applicant for a discharge from his debts. The Statement of Affairs includes data relative to residences, occupation, income, location of recent income tax return filings, the location of bank accounts and safe deposit boxes, and books and records, descriptions of property held in trust, whether the debtor has been a party to any suit execution or attachment, and data concerning repaid loans, property transfers, and fire, theft, and gambling losses. The Debtor's Petition describes his assets, assets claimed to be exempt under federal and state law, and a list of creditors, listed on a priority basis.

Upon the filing of the papers and payment or promise to pay the filing fees, the petition is referred to a referee in bankruptcy. In Colorado, petitions are referred "concurrently, jointly, and severally" to Referees Hilliard, Matsch, and Fullerton, presiding in Denver, and Referee Keen, presiding in Pueblo. The referees, in turn, set a date for the first hearing or meeting of the debtor, a referee, and his creditors. Moreover, if the filing fees have been paid in full at the time of the filing of the petition, the referee will set a time limit after the expiration of which objections to the discharge will not be accepted. Usually this time limit will be six months. Creditors whose names appear in the Debtor's Petition are then notified that the debtor has been adjudged to be a bankrupt and that they must file their claims against his assets within the time limits. Upon receipt of their notification, secured creditors usually ask permission to foreclose, and this request is accompanied by a fee.

Between ten and 30 days after the debtor is declared to be a bankrupt, a first meeting of creditors is held. Attending this meeting are all interested creditors or their representatives, the referee, the bankrupt, and the bankrupt's attorney, if any. If they have not already done so, creditors may at this time submit proof of their claims against the bankrupt's assets. According to section 55 of the law, the referee may allow or disallow the claims of the creditors, and publicly examine, or cause to be examined, and may permit creditors to examine, the bankrupt. It is the duty of the bankrupt to attend this first meeting and to submit himself to this examination by creditors and the referee concerning his property and conduct.

Except in no-asset cases, a trustee is appointed by the creditors or, if they should fail to do so, by the court, usually during this first meeting. If the schedule of a voluntary

bankrupt discloses no assets, and if no creditor appears at the first meeting, the court may, by order setting out the facts, direct that no trustee be appointed if the court should deem it advisable. Usually the trustee is contacted prior to the meeting and agrees to serve in that capacity. Most often, one of 12 trustees is appointed in the case in order to prevent the necessity of a second meeting in the event the appointed trustee declines to serve.

The trustee's primary general duty is to safeguard and preserve the assets of the bankrupt's estate, and his primary specific duty is to collect and reduce to money the property of the estates for which he is trustee, under the direction of the court, and close the estates as expeditiously as is compatible with the best interests of the parties in interest.

Generally during the first meeting, the referee sets a time limit during which objections to the bankrupt's discharge must be filed. The referee cannot grant a discharge unless he is satisfied that none of the grounds for objection to discharge were committed and the time limit has expired. Acts which constitute grounds for objection to discharge include (1) the failure of the bankrupt to explain satisfactorily any losses of assets or deficiency of assets to meet his liabilities, (2) a previous discharge of debts within the six prior years to the date of filing of the petition, and (3) the removal, destruction, concealment, etc., of any of the property, with the intent to hinder, delay, or defraud his creditors. Upon the time limit's expiration and the failure of any objection to discharge being filed within the time limit, the bankrupt is discharged from any further obligation to pay, except for certain debts which are not dischargeable. These non-dischargeable debts include:

(1) taxes due state, local, and the federal governments;

(2) alimony, maintenance, and child support monies due; and

(3) liabilities for obtaining money or property by false pretense or false representation.

After the trustee has collected all of the bankrupt's non-exempt assets and converted the non-cash assets to cash, claims against these assets are paid according to the priority they have been given by the federal law. Priority claims include, in their respective priority: (1) the costs and expenses of administering the bankrupt's estate, (2) wages not exceeding $600 which have been earned within three months prior to adjudication due to others, (3) taxes due and owing by the bankrupt to the United States or any subdivision thereof, and (4) other persons having priority under the laws of the United States and landlords who are entitled to rent and who are entitled to priority by Colorado law. Non-priority claims are then paid with the balance, if any, prorated among the claims, and the case is finally closed.

## Data Used

The data used to survey consumer bankruptcies in Colorado were primarily extracted from the initial petitions of bankrupts. Bankruptcy petitions filed with the Clerk of the U. S. District Court are public records, but permission was requested of and received from Judge Hilliard to inspect these documents prior to the study. Amendments to the petitions were not examined. Although initial petitions are amended, it was felt after a review of these amendments that most were concerned with minor address changes and not amounts owed. Moreover, there is some incentive to submit correct initial petitions as each must be sworn to under oath. Nevertheless, there are occasional major amendments to these petitions, mostly due to the financial mess in which the debtor finds himself.

Additional information was received from the Credit Bureau of Greater Denver and from the attorneys representing the debtors. The credit bureau provided information concerning each bankrupt's credit rating prior to his filing and questionnaires mailed to and received from the attorneys of the bankrupts provided information concerning the bankrupts' age, marital status, educational level, estimated 1966 income for petitioner and spouse, the number of months the petitioner was unemployed during the 12-month period prior to filing, and the causes of and steps taken by the debtors as alternatives to bankruptcy.

## Sample

This survey was based upon the debtors who filed consumer bankruptcy petitions during February and March, 1966, and who were residents of northern Colorado (Figure I) during all or most of the preceding six-month period. Thus, this is a sample that is limited both to time and geography. It was necessary to work from the court docket in drawing this sample, a docket which includes both consumer as well as business bankruptcies. A review of each petition was necessary to ascertain whether a petition was a "business" or "consumer" petition. Only consumer petitions were retained.

Female petitioners were included in the sample only if their spouses, if any, had not filed petitions also. Married females whose husbands also filed petitions were excluded from the sample to prevent overrepresentation of families in which both husband and wife had filed.

From 8 a.m. on February 1 to 5 p.m. on March 31, 1966, 691 bankruptcy petitions were filed with the Clerk of the U. S. District Court in Denver. Of this number, 306 were considered as being "consumer" petitions and these constituted the fundamental sample group. Of the 385 petitions excluded from the sample, 78 were Chapter XIII petitions, 72 petitions were filed by wives of husbands who had also filed, six were corporations, 112 were businesses,

and 11 petitions were filed by persons who did not retain legal counsel. Because of the nature of the study, this last group was excluded. The remaining 106 petitions not included were filed by debtors residing in the southern portion of the state. Their petitions, immediately upon their filing, were transferred to Referee Keen in Pueblo and were therefore not available for the survey.

## Social Profile

One of the first questions the committee tried to answer was: Who are the people that file bankruptcy petitions? Based upon the 306 cases of consumer bankruptcy, except for age, education, marital status, and size of family characteristics which are based upon the 117 attorney questionnaires returned, the typical petitioner is likely to have the following characteristics:

| Characteristic | Typical |
|---|---|
| Sex | Male |
| County of residence | Denver |
| Age | 26 to 35 years |
| Educational level attained | One to 12 years of school |
| Marital status | Married |
| Occupation | Operative and kindred worker |
| Size of family | Four dependents |
| Income | $4,000 per year |
| Number of residences during the past six years, including present address | Four |

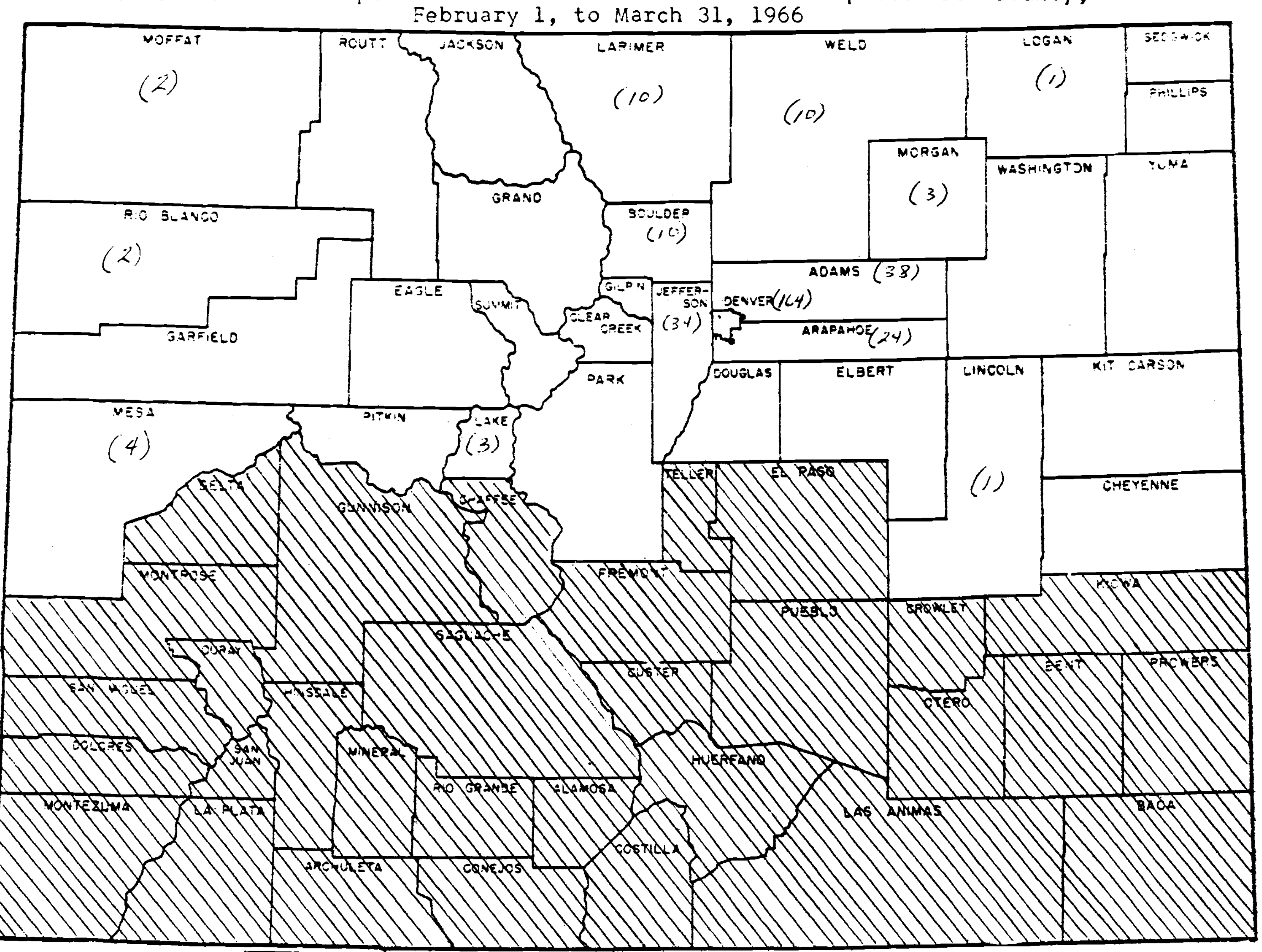
Based on the 117 replies from the petitioners' attorneys, 94 (80.3 per cent) of the 117 were males and 23 were females. Within the 306-petitioner sample groups, 248 (81.0 per cent) petitioners were males. The large per cent of males in the sample resulted from the deliberate exclusion of wives of petitioners who also were petitioners in order to avoid an overrepresentation of certain families.

Fifty (42.7 per cent) of the 117 males and females were estimated by their attorneys to be in the 26-to-35 years-old age group, 32 (27.4 per cent) were estimated to be 36 to 45 years old, 20 (17.1 per cent) to be 21 to 25 years of age, and 15 (12.8 per cent) were 46 or older.

One hundred and two petitioners (87.2 per cent) of the 117 were thought by their attorneys to have either graduated from high school or to have permanently left school prior to graduation. Only eight petitioners (6.8 per cent) had received any college education, while the educational level attained by seven petitioners (6.0 per cent) was not known or reported.

Figure I

Colorado Counties Included Within Geographical Sample Of Consumer Bankruptcies And Number Of Consumer Bankruptcies Per County, February 1, to March 31, 1966




Counties Included ☐
Counties Excluded ▨

**COLORADO STATE PLANNING COMMISSION**

Marital status of the 117 petitioners was reported as follows:

| Marital Status | Number of Petitioners | Per Cent of the 117 Petitioners |
|---|---|---|
| Single | 5 | 4.3 |
| Married | 77 | 65.8 |
| Married but separated | 11 | 9.4 |
| Married but divorce pending | 12 | 10.3 |
| Divorced | 8 | 6.8 |
| Widowed | 2 | 1.7 |
| No information reported | 2 | 1.7 |
| | 117 | 100.0 |

The number of dependents, including a wife, of the petitioners ranged from none to eight:

| Number of Dependents, Including a Wife, If Any | Number of Petitioners | Per Cent of the 117 Petitioners |
|---|---|---|
| 0 | 7 | 6.0 |
| 1 | 6 | 5.1 |
| 2 | 7 | 6.0 |
| 3 | 17 | 14.5 |
| 4 | 10 | 8.5 |
| 5 | 1 | .9 |
| 6 | 2 | 1.7 |
| 7 | 1 | .9 |
| 8 | 1 | .9 |
| No information reported | 65 | 55.6 |
| | 117 | 100.1 |

Most of the 306 petitioners resided in Denver (53.6 per cent), and 84.9 per cent were living within the four-county metropolitan area when their petitions were filed, as follows:

| County of Residence | Number of Petitioners | Per Cent of the 306 Petitioners |
|---|---|---|
| Denver | 164 | 53.6 |
| Adams | 38 | 12.4 |
| Jefferson | 34 | 11.1 |
| Arapahoe | 24 | 7.8 |
| Boulder | 10 | 3.3 |
| Larimer | 10 | 3.3 |
| Weld | 10 | 3.3 |
| Mesa | 4 | 1.3 |

| County of Residence | Number of Petitioners | Per Cent of the 306 Petitioners |
|---|---|---|
| Lake | 3 | 1.0 |
| Morgan | 3 | 1.0 |
| Rio Blanco | 2 | .7 |
| Moffat | 2 | .7 |
| Lincoln | 1 | .3 |
| Logan | 1 | .3 |
| | 306 | 100.1 |

The occupations listed on the 306 petitions were placed within several Bureau-of-the-Census categories. The categories, and the number of petitioners within each, were as follows:

| Occupation | Number of Petitioners | Per Cent of the 306 Petitioners |
|---|---|---|
| Professional, technical, and kindred workers | 10 | 3.3 |
| Farmers and farm managers | 0 | .0 |
| Managers, officials, and proprietors, excluding farm | 8 | 2.6 |
| Clerical and kindred workers | 21 | 6.9 |
| Sales workers | 18 | 5.9 |
| Craftsmen, foremen, and kindred workers | 48 | 15.7 |
| Operatives and kindred workers | 109 | 35.6 |
| Private household workers | 1 | .3 |
| Service workers, excluding private household | 32 | 10.5 |
| Farm laborers and foreman | 4 | 1.3 |
| Laborers, except farm and mine | 38 | 12.4 |
| Miscellaneous: | | |
| Unemployed | 4 | 1.3 |
| Information not available | 4 | 1.3 |
| Student | 5 | 1.6 |
| Retired | 1 | .3 |
| Military (enlisted) | 3 | 1.0 |
| | 306 | 100.0 |

On the petitions' Statement of Affairs is the question: Where else have you resided during the six years immediately preceding the filing of the original petition herein? The number

of addresses reported under this question in the 306 petitions, in addition to the petitioners' present address, were:

| Number of Residences During Past Six Years, Including Present Address | Number of Petitioners | Per Cent of the 306 Petitioners |
|---|---|---|
| 1 | 34 | 11.1 |
| 2 | 53 | 17.3 |
| 3 | 58 | 19.0 |
| 4 | 55 | 18.0 |
| 5 | 38 | 12.4 |
| 6 | 20 | 6.5 |
| 7 | 13 | 4.2 |
| 8 | 10 | 3.3 |
| 9 | 6 | 2.0 |
| 10 | 1 | .3 |
| 11 | 0 | .0 |
| 12 | 0 | .0 |
| 13 | 1 | .3 |
| 14 | 1 | .3 |
| 15 | 2 | .7 |
| Information not available | 14 | 4.6 |
| | 306 | 100.0 |

Finally, based on income data extracted from the petitions, the petitioners' median income during 1965 was $4,000:

| County | Median Income of the 306 Petitioners |
|---|---|
| Denver | $ 4,000 |
| Adams | 4,196 |
| Arapahoe | 4,377 |
| Jefferson | 4,950 |
| Tri-County Area | 4,500 |
| Four-County Metropolitan area | 4,000 |
| Mesa | 5,357 |
| Moffat | 4,027 |
| Rio Blanco | 4,011 |
| Boulder | 5,042 |
| Lake | 6,800 |
| Larimer | 4,500 |
| Morgan | 3,285 |

| County | Median Income of the 306 Petitioners |
|---|---|
| Logan | $ 3,360 |
| Weld | 3,250 |
| Lincoln | 4,362 |
| Non-Metropolitan area | 4,500 |
| Northern Colorado (geographical sample area) | 4,000 |

Debt Profile

The 306 petitioners within the sample claimed 5,264 debts with an aggregate value of $2,877,724. The petitioners had a median debt of $4,685, and a median of 14 debts. The number of debts per petitioner ranged from one to 157, and the value of debts per petitioner ranged from $582 to $546,039. The mean debt per petitioner, $9,404, was substantially higher than the median, indicating that there were some petitioners with unusually heavy debt. The mean debt, exclusive of the one petitioner who claimed $546,039 in debts, however, is only $7,645. (The second highest total debt per petitioner reported amounted only to $35,373.) Since a complete picture is not presented with only a total debt figure, types of debt and debt holders should also be considered.

Total debt consists of priority, secured, unsecured, and accommodation paper debts. Priority debt is that type of debt which the federal law requires to be satisfied by the liquidation of assets before other types of debt. It usually consists of unpaid taxes and recently-incurred rent. The distinction between secured and unsecured debt is, of course, the former debt is guaranteed by something of material value, in addition to a promise to pay, and accommodation paper consists mostly of cosigned loans.

Priority debt amounted to $7,630, or .3 per cent of the total debt. Only 44 priority debts were presented by 34 petitioners, most of which represented unpaid taxes:

| Type of Debt | | Value | Number of Debts |
|---|---|---|---|
| Taxes: | Internal Revenue Service | $ 2,816 | 15 |
| | Colorado Department of Revenue | 250 | 5 |
| | Colorado County Property | 2,679 | 10 |
| Rent | | 695 | 9 |
| Misc. | | 1,190 | 5 |
| | | $ 7,630 | 44 |

Priority debt ranged from $10 to $980, with the median debt of $100. Mean debt amounted to $224 per petitioner. Priority debt should be considered as having minor significance in the total debt picture, since dozens of petitioners listed total debts that exceeded the amount of total priority debt of these 34 petitioners. As mentioned, it constituted only .3 per cent of the total debt.

Secured debt represents about one-half of the total debt (49.5 per cent) and amounts to $1,423,548. The range of this debt per petitioner was from $60 to $28,884, and the median petitioner debt was $2,702. The mean debt was somewhat higher, $5,157 per petitioner, and represents several cases of unusually large amounts of secured debt. However, the number of debts is small, and represents the value and number of real estate mortgages involved. Approximately one-half of all secured debt represents such home mortgages:

| Type of Debt Holder | Total Value of Debt | Per Cent | Number of Debts | Per Cent |
|---|---|---|---|---|
| Credit Unions | $ 52,999 | 3.7 | 37 | 4.2 |
| Industrial Banks | 111,674 | 7.8 | 102 | 11.6 |
| State and National Banks | 95,895 | 6.7 | 77 | 8.8 |
| Real Estate Debt Holders | 673,823 | 47.3 | 74 | 8.4 |
| Merchandise Debt Holders | 50,288 | 3.5 | 120 | 13.7 |
| Finance and Credit Companies | 342,031 | 24.0 | 399 | 45.4 |
| Other | 96,838 | 6.8 | 70 | 8.0 |
| | $ 1,423,548 | 99.8 | 879 | 100.1 |

Only 276 petitioners reported secured debt, and the typical petitioner had only three secured debts. The range of the 879 secured debts was one to 12.

Unsecured debt constitutes the same portion of total debts as does secured debt (49.5 per cent), and only a few dollars more: $1,424,641. This is about the only similarity, however. The petitioners' median unsecured debt equals $1,933, and ranges per petitioner from $15 to $545,624. The number of debts per petitioner totals $4,312, and ranged from one to 148. Total debt by category is as follows:

| Type of Debt | Value of Debts | Per Cent | Number of Debts | Per Cent |
|---|---|---|---|---|
| Automobile expenses | $ 56,972 | 4.0 | 438 | 10.2 |
| Medical expenses | 153,997 | 10.8 | 1,337 | 31.0 |
| Department stores | 63,660 | 4.5 | 291 | 6.7 |
| Liabilities | 599,338 | 42.1 | 66 | 1.5 |
| Unpaid loans | 340,362 | 23.9 | 608 | 14.1 |
| Rent | 30,165 | 2.1 | 298 | 6.9 |
| Other | 180,147 | 12.6 | 1,274 | 29.5 |
| | $ 1,424,641 | 100.0 | 4,312 | 99.9 |

The largest single item is the liability category, but this may be reduced almost to nothing with the subtraction of the one large civil suit liability of $546,039, or from $599,338 to less than $53,714. The second largest category constitutes unsecured loans from all sources, including credit unions, finance companies, industrial banks, and persons. Automobile expenses include gas, oil, repair, and insurance expenses. Medical expenses include all hospital, dental, optical, and medical expenses. The category "other" includes those debts considered unclassifiable as well as non-classifiable. Only two persons reported no unsecured debts.

Accommodation paper debt represents only .8 per cent of the total debt, and amounts to $21,905. These debts range per petitioner from $30 to $4,563. The mean debt is $996 and higher than than the $591 median debt. Only 29 persons reported this type of debt.

Total assets amount to $465,507, or 16.2 per cent of total debt. Of this amount, $146,881 represents real property; $292,343 represents personal property; and the balance, $26,283, consists of choices in actions, e.g., checking and savings account balances, cash on hand, and utility deposits. Total exempt property, however, equals $441,941, or 95 per cent of total assets:

| Assets | Value | Per Cent of Total Assets | Number of Persons Reporting Assets | Per Cent of Total Number of Petitioners |
|---|---|---|---|---|
| Real property | $ 146,881 | 31.6 | 54 | 17.6 |
| Personal property | 292,343 | 62.8 | 300 | 98.0 |
| Choices in action | 26,283 | 5.6 | 77 | 25.2 |
| TOTAL | $ 465,507 | 100.0 | 302 | 98.7 |
| Total Exempt Property | $ 441,941 | 94.9 | 302 | 98.7 |

By far the majority of petitioners reported personal property assets; only six did not.

Assets which may be claimed exempt under the laws of Colorado include:

| Property Exempt | Value Exempt |
|---|---|
| Section 77-2-2, C.R.S. 1963: | |
| Necessary wearing apparel of each head of a family, single person and dependent. | First $250. |
| Watches, jewelry, and articles of adornment of each head of a family, single person and dependent. | First $100. |
| Library, family pictures, and school books, provided that this property does not constitute all or part of the debtor's stock in trade. | First $500 for the head of a family and his or her dependents -- First $200 for a single person. |
| Burial sites, including spaces in mausoleums. | One site or space for each member of a family and one site or space for a single person. |
| Household goods. | First $750 if owned and used by the head of a family or owned by such head and used by his or her dependents -- First $250 if owned and used by a single person. |

| Property Exempt | Value Exempt |
| --- | --- |
| Provisions and fuel on hand. | First $300 if for the use or consumption of the head of a family or by the dependents of the head of a family -- First $100 if for the use or consumption of a single person. |
| If principle occupation is agriculture, livestock or poultry raising, livestock and poultry. | First $1,500 if head of a family -- First $750 if a single person. |
| If principle occupation is agriculture, livestock or poultry raising, horses, mules, wagons, carts, machinery, harness, implements, and tools. | First $1,000 if head of a family -- First $500 if a single person. |
| Pensions, compensations or allowances for any purpose on account or arising out of the services of such person as a member of the armed forces of the United States in time of war or armed conflict, and whether in the actual possession of the recipient thereof or deposited or loaned by him or her, and a like exemption to the unremarried widow and the children of such person who receives a pension, compensation or allowance of any kind from the United States on account or arising out of such service by a deceased member of such armed forces; and when a debtor entitled to exemption under this section dies or leaves his or her family said exemption shall extend to the dependents of said debtor. | No dollar limitation. |
| Stock in trade, supplies, fixtures, maps, machines, tools, equipment, books, and business materials, kept for the purpose of carrying on any gainful occupation. | First $500 of any debtor. |
| Motor vehicles used for the purpose of carrying on any gainful occupation. | First $300 of one or more motor vehicles of any debtor. |

| Property Exempt | Value Exempt |
|---|---|
| Library kept and used in carrying on profession. | First $500 if a professional person or minister or priest of any faith. |
| The avails of policies or certificates of life insurance. | First $5,000 of any debtor. |
| The proceeds of any claim for loss, destruction or damage, and the avails of any fire or casualty insurance payable because of loss, destruction or damage, to any property which would have been exempt under this article (77-2), to the extent of the exemptions incident to such property. | No dollar limitation. |
| Proceeds of any claim for damages for personal injuries suffered by any debtor excepting for obligations for treatment of any kind for such injuries or collection of such damages. | No dollar limitation. |
| House trailer or trailer coach while used and occupied as a place of residence. | First $2,500 of only one trailer or coach if used and occupied as a place of residence by the head of a family and one or more members of his or her family. |
| Section 77-31-1, C.R.S., 1963: | |
| Homestead. | First $5,000 if head of family and householder in state of Colorado. |

Replies From Attorneys

The 176 attorneys who counseled the 306 petitioners were requested to provide additional information in order to discover the original causes of consumer bankruptcy. In addition to the several age, marital status, and educational level attained questions, each of the attorneys was requested to indicate the following:

1. To which one or more of the following would you attribute as the primary causes leading to petitioner filing for bankruptcy (please indicate in ranking order of importance):

Unexpected drop in income_____
Unexpected medical and hospital expense_____
Wages garnished or attached_____
Threats of wages being garnished or attached_____
Unexpected motor vehicle expense_____
Breakup in marriage_____
Liability for accidental damages not covered by insurance (court awards)_____
Installment purchases greater than petitioner's normal ability to pay_____
Other(s)_____

2. Which of the following steps, if any, did petitioner take to solve his financial difficulties:

Applied for a personal loan to pay off existing debts_____
Attempted to refinance existing loans_____
Sought advice or services of commercial debt adjuster or credit counselor_____
Mortgaged or sold real or personal property_____
Obtained or sought a second job_____
Applied for a wage earner's plan (Chapter XIII)_____
Other:_____

3. To your knowledge, did any one or more of petitioner's creditors:

Offer to refinance existing debt or adjust payments thereon_____
Threaten legal action, including garnishment_____
Obtain a deficiency judgment or balance_____
Suggest alternative measures other than bankruptcy to assist petitioner with his financial difficulties_____
If so, what measures were suggested:

With respect to question No. 1, some attorneys did not indicate priority, while others did. Attorneys for 111 petitioners did indicate an order of importance and felt that too many installment purchases, threats of garnishment, and unexpected medical and hospital expenses were the leading causes:

| Cause | Priority | | | | | |
|---|---|---|---|---|---|---|
| | First | Second | Third | Fourth | Fifth | Total |
| Unexpected drop in income | 4 | 2 | 5 | | | 11 |
| Unexpected medical and hospital expense | 1 | 9 | 2 | 1 | 1 | 14 |

| Cause | Priority | | | | | |
|---|---|---|---|---|---|---|
| | First | Second | Third | Fourth | Fifth | Total |
| Wages garnished or attached | 6 | 3 | | | | 9 |
| Threats of wages being garnished or attached | 10 | 9 | 7 | 1 | | 27 |
| Unexpected motor vehicle expense | | 2 | 3 | 1 | | 6 |
| Breakup in marriage | 3 | 5 | 1 | 1 | | 10 |
| Liability for accidental damages not covered by insurance (court awards) | | | | | | 0 |
| Installment purchases greater than petitioner's normal ability to pay | 12 | 6 | 9 | 2 | 1 | 30 |
| Other(s) | | | 2 | 2 | | 4 |
| | 36 | 36 | 29 | 8 | 2 | 111 |

Attorneys who did not indicate priority or rank of importance thought the same:

| | Number |
|---|---|
| Unexpected drop in income | 13 |
| Unexpected medical and hospital expense | 26 |
| Wages garnished or attached | 24 |
| Threats of wages being garnished or attached | 39 |
| Unexpected motor vehicle expense | 3 |
| Breakup in marriage | 21 |
| Liability for accidental damages not covered by insurance (court awards) | 4 |
| Installment purchases greater than petitioner's normal ability to pay | 41 |
| Other (s) | 22 |
| | 193 |

Combined, the results were as follows:

| | Number | Per Cent |
|---|---|---|
| Unexpected drop in income | 24 | 7.9 |
| Unexpected medical and hospital expense | 40 | 13.2 |
| Wages garnished or attached | 33 | 10.9 |

| | Number | Per Cent |
|---|---|---|
| Threats of wages being garnished or attached | 66 | 21.9 |
| Unexpected motor vehicle expense | 9 | 3.0 |
| Breakup in marriage | 31 | 10.2 |
| Liability for accidental damages not covered by insurance (court awards) | 4 | 1.3 |
| Installment purchases greater than petitioner's normal ability to pay | 71 | 23.4 |
| Other (s) | 26 | 8.6 |
| | 304 | 100.2 |

The 26 replies in the "other" category were as follows:

"Insufficient income."

"Going to school."

"Deficiency claims after repossession of chattels after added expenditures incurred in break-up of marriage and large doctor and hospital bills not covered by insurance."

"Husband incurred substantial indebtedness prior to separation."

"Cosigner for family member, foreclosure on property."

"Petitioner lost $400 of personal property in flood."

"Deficiency on repossessions."

"Low income, seasonal employment and poor fiscal management."

"Threat by a creditor of garnishing salary causing loss of job is greatest threat."

"Husband sent to CSP plus his poor money management."

"Also bad judgment in cosigning."

"Divorce, 3 children to support with little or no support money from husband."

"Almost unbelievable inability to manage money because of previous lack of any experience."

"Petitioner returned from Viet Nam and married unwisely."

"Obligations from business failure - circa 1961 - intermittent employment."

"Husband's failure to pay child support."

"Accumulated bills - employed wife became pregnant and lost her job."

"Garnishment contributed to loss of employment."

"Husband's drinking and son's marital and criminal defense expenses."

"Petitioner's husband had industrial accident and must be retrained for other work."

"Flood damage to most of his property from June flood - most was mortgaged."

"Criminal proceedings."

"The wife was given money to pay bills and she did not."

"Spouse not making sufficient to meet needs of family - desertion of spouse."

"In 1963, the petitioner suffered a broken back in a non-compensable accident and was hospitalized for many months and was off work for approximately one year incurring heavy medical expenses. As soon as he was able to go back to work, he went into debt on installment credits far beyond his means of ever paying off, much less paying the bills for the previous year."

"I attribute this case and such other wage earner cases as I have handled to the over extension of credit by lending agencies and suppliers who in many cases pledge or discount chattel mortgages to lending agencies. Upon default, paper is refinanced with further charges for the new loan and the earning power of the individual is insufficient to meet the installments. Employers naturally don't want to be bothered by garnishments or phone calls from creditors and the debtor doesn't have much choice. As an attorney, these cases are a headache, and I have handled them only by reason of the legal referral service."

Question No. 2 did not request a priority indication: Which of the following steps, if any, did petitioner take to solve his financial difficulties. The answers to the question were as follows:

| Steps | Number | Per Cent |
|---|---|---|
| 1. Applied for a personal loan to pay off existing debts | 36 | 19.9 |
| 2. Attempted to refinance existing loans | 43 | 23.8 |
| 3. Sought advice or services of commercial debt adjuster or credit counselor | 18 | 9.9 |
| 4. Mortgaged or sold real or personal property | 15 | 8.3 |
| 5. Obtained or sought a second job | 26 | 14.4 |
| 6. Applied for a wage earner's plan (Chapter XIII) | 1 | .6 |
| 7. Other | 25 | 13.8 |
| 8. Not applicable or available | 17 | 9.4 |
| | 181 | 100.1 |

Steps 2, 1, and 5 accounted for 23.8, 19.9 and 14.4 per cent, respectively, of the total. Collectively these three accounted for more than half (58.1 per cent) of the steps elected, and indicate that a sizeable number of bankrupts in the sample took some action prior to taking bankruptcy. Some comments of those attorneys who checked the "other" category included:

"Tried to make small payments to existing creditors; they continued to harass, however."

"Ignored creditors and paid current expenses."

"Attempted to induce some creditors to accept small monthly payments without success."

"Discussed indebtedness with creditors."

"Attorney attempted to work out plan with creditors."

"Petitioner obtained a steady job with U.S. Mint - first steady job in a long time."

"Asked for time and advice."

"Due to earning ability and large debt incurred clearing marriage, no solution but to file bankruptcy."

"Decided to file bankruptcy because creditors were beginning to jeopardize job by constantly complaining to superior - subject is a Federal employee."

"Tried to have creditors (hospitals and doctors) wait until debts would be able to be paid."

"Consulted with legal aid."

"Housewife with children went to work."

"Gave it all up and filed petition in bankruptcy."

"Sought employment."

"Consulted me as attorney."

"Tried to compromise but could not."

"Tried to meet payments on her own income and was not able to do so. Could not obtain any financing."

"Creditors calling employee, and employer told him to settle with them or take bankruptcy and get rid of them. He couldn't settle and had no alternative."

"Asked help of probation officer."

Question No. 3 also did not request an indication of priority: "To your knowledge did any one or more of petitioners' creditors: ..." The results of this question were:

| | Number | Per Cent |
|---|---|---|
| Offer to refinance existing debt or adjust payments thereon. | 21 | 11.7 |
| Threaten legal action, including garnishment. | 100 | 55.6 |
| Obtain a deficiency judgment or balance. | 37 | 20.6 |

| | Number | Per Cent |
|---|---|---|
| Suggest alternative measures other than bankruptcy to assist petitioner with his financial difficulties. | 8 | 4.4 |
| If so, what measures were suggested | 5 | 2.8 |
| Not applicable. | 9 | 5.0 |
| | 180 | 100.1 |

The most frequent action taken by a creditor appears to be to threaten legal action. The second most frequent step was the obtaining of a deficiency judgment or balance. Together these two steps accounted for 76.2 per cent of the steps taken. Comments of attorneys as to this question include:

"More stringent regulation as to deficiency judgments. I believe he could have paid off principal but not with high interest."

"Might have paid debts if no interest."

"Monthly payments in smaller amounts to pay creditors -- was unable to finance two homes and pay bills."

"Assignment to creditors under Colorado statutes."

"Bankruptcy was his only remedy -- he bought beyond his ability to pay."

"Get rid of the loan sharks. Repeal the garnishment law in Colorado so that unscrupulous people can't hold garnishment over people's heads."

"Refinance and wage earners' plan."

"There are no alternatives of which I am aware."

"Petitioner get a second job."

"Wife get a second job."

"Judgment commenced before bankruptcy."

"Abolish the law permitting garnishment of wages."

"Assignment, but unexpected hospitalization forced bankruptcy."

"The debts were accumulated over a number of years as a result of illness. Petitioner on welfare for a number of years unable to get employment as a result of age and physical conditions."

"Income insufficient, debts too large, default for too long a period of time."

"As a result of divorce hearing, expense and payments on debts more than able to pay."

"Two judgments."

"No alternative feasible."

"Petitioner refused to do anything but file petition in bankruptcy."

"Compromise."

"Consolidation loan, small monthly payment arrangement with creditors."

"Take a certain per cent of the debts owed in full satisfaction."

"Talk with all creditors and reduce monthly payments."

"Passage of legislation requiring finance, etc., to set forth all charges for which borrower is or may be responsible for."

"One creditor offered to loan petitioner an additional $100.00 (secured) if he would forego a discharge in bankruptcy."

"None, as garnishment threatened her job."

Names of the 260 Denver-area petitioners were submitted to the Credit Bureau of Greater Denver in order to discover whether their bankruptcy filings surprised their creditors. The bureau reported that at the point of the bankruptcy, all the names submitted would have been rated as having an unsatisfactory rating. For a period of years prior to bankruptcy, the bureau reported the following ratings for the 260 petitioners:

| Rating | Number of Petitioners | Per Cent of the 260 Petitioners |
|---|---|---|
| No derogatory items of record; stability of employment and residence; credit history good over a period of years | 12 | 4.6 |
| No derogatory items of record; lack of credit information; old but good credit | 42 | 16.2 |
| Derogatory items of record; unsatisfactory credit history | 147 | 56.5 |
| Limited credit experience or no credit in Denver prior to the bankruptcy, indicating unsatisfactory credit at place of previous residence or an actual unsatisfactory record in the Bureau's file from another city | 26 | 10.0 |
| No rating returned with name | 23 | 8.8 |
| Explanatory comments but without rating | 10 | 3.8 |
| | 260 | 99.9 |

# APPENDIX A

Comparison of Seventh Draft (1942)
Of the Uniform Small Loan Law With the
1943 Colorado Small Loan Act and the
1955 Colorado Consumer Finance Act

## COMPARISON OF SEVENTH DRAFT OF THE UNIFORM SMALL LOAN LAW WITH 1943 COLORADO SMALL LOAN ACT AND 1955 COLORADO CONSUMER FINANCE ACT

### Seventh Draft of the Uniform Small Loan Law As Revised June 1, 1942

Section 1. (a) The legislature finds as facts and determines that:

1. There exists among citizens of this state a widespread demand for small loans. The scope and intensity of this demand have been increased progressively by many social and economic forces.

2. The expense of making and collecting small loans, which are usually made on comparatively unsubstantial security to wage-earners, salaried employes, and other persons of relatively low incomes is necessarily high in relation to the amounts lent.

3. Such loans cannot be made profitably under the limitations imposed by existing laws relating to interest and usury. These limitations have tended to exclude lawful enterprises from the small loan field. Since the demand for small loans cannot be legislated out of existence, many small borrowers have been left to the mercy of those willing to bear the opprobrium and risk the penalties of usury for a large profit.

4. Interest charges are often disguised by the use of subterfuges to evade the usury law. These subterfuges are so complicated and technical that the usual borrower of small sums is defenseless even if he is aware of the usurious nature of the transaction and of his legal rights.

5. As a result, borrowers of small sums are being exploited, to the injury of the borrower, his dependents, and the general public. Charges are generally exorbitant in relation to those necessary to the conduct of a legitimate small loan business; trickery and fraud are common; and oppressive collection practices are prevalent.

6. These evils characterize and distinguish loans of $300 or less. Legislation to control this class of loans is necessary to protect the public welfare.

### 1943 Colorado Small Loan Act

Section 1. Contained definitions generally the same as in uniform draft Sec. 1 (b), including the designation of State Bank Commissioner to administer this law. 1943 Colorado act did not include any statement of legislative intent as contained in Sec. 1 (a) of uniform draft.

### 1955 Colorado Consumer Finance Act, As Amended

73-3-2, C.R.S. 1963. In addition to definitions contained in uniform draft and 1943 Colorado small loan act, which this 1955 act replaced, definitions were also included as follows:

(6) "Engage in the business of making loans" shall be taken to apply to every person who shall make any loan of money of fifteen hundred dollars or less, where the rate of interest, charges or consideration therefor is greater than twelve per cent per annum;

(7) "Contract of loan" shall mean the promissory note or other evidence of the indebtedness executed by a borrower or borrowers, comaker or comakers, or guarantor or guarantors in connection with a loan;

(8) "Amount of loan" or "loan" shall mean the amount of money advanced to or for and upon behalf of borrower including the amount required to retire an existing loan, insurance premiums and costs incurred as in this article permitted for and upon behalf of the borrower in connection with the making of a loan, but shall not include any charges by subsection (1) of section 73-3-14.

Note: The 1942 uniform draft and 1943 Colorado small loan act applied to loans of $300 or less -- 1955 act applies to loans of $1,500 or less.

The 1955 act also did not include any statements relating to legislative intent.

| Seventh Draft of the Uniform Small Loan As Revised June 1, 1942 | 1943 Colorado Small Loan Act | 1955 Colorado Consumer Finance Act, As Amended |
|---|---|---|
| 7. It is the intent of the legislature in enacting this law to bring under public supervision those engaged in the business of making such loans, to eliminate practices that facilitate abuse of borrowers, to establish a system of regulation for the purpose of insuring honest and efficient small loan service and of stimulating competitive reductions in charges, to allow lenders who meet the conditions of this Act a rate of charge sufficiently high to permit a business profit, and to provide the administrative machinery necessary for effective enforcement. | | |
| (b) The following words and terms when used in this Act shall have the following meanings unless the context clearly requires a different meaning. The meaning ascribed to the singular form shall apply also to the plural. | | |
| "Person" shall include individuals, co-partnerships, associations, trusts, corporations, and any other legal entities. | | |
| "License" shall mean a license, issued under the authority of this Act, to make loans in accordance with the provisions of this Act at a single place of business. | | |
| "Licensee" shall mean a person to whom one or more licenses have been issued. | | |
| "Commissioner" shall mean the Commissioner of Banking. | | |
| "Department" shall mean the Department of Banking. | | |
| Section 2. (a) No person shall engage in the business of lending in amounts of $300 or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, which in the aggregate are greater than ..., except as provided in and authorized by this Act and without first having obtained a license from the Commissioner. For the purpose of this section, a loan shall be deemed to be in the amount of $300 or less if the net amount or value advanced to or on behalf of the borrower, after deducting all payments for interest, principal, expenses, and charges of any nature taken substantially contemporaneously with the making of the loan, does not exceed $300. | Section 2. (a) "12 per cent per annum" inserted in space left blank in uniform draft. Last sentence in Sec. 2 (a) in uniform draft not included. | 73-3-3, C.R.S. 1963. (a) Amount of maximum loan increased to $1,500. Remainder of subsection the same as in the 1943 act. |
| (b) No person doing business under the authority of any law of this state or of the United States relating to banks, savings banks, trust companies, savings or building and loan associations,...or credit unions shall be eligible to become a licensee under this Act, nor shall this Act apply to any | (b) Exemptions expanded to include "industrial banks" and "bona fide commercial loans made to dealers upon personal property held for resale." Sentence also added that: "Nothing | (b) Exemptions generally the same as those in the 1943 act except that the following provision was added: "This article shall not apply to the acquiring, directly or |

| Seventh Draft of the Uniform Small Loan Law As Revised June 1, 1942 | 1943 Colorado Small Loan Act | 1955 Colorado Consumer Finance Act, As Amended |
|---|---|---|
| business transacted by any such person under the authority of and as permitted by any such law, nor to any bona fide pawnbroking business transacted under a pawnbroker's license. | contained herein shall be construed as abridging the rights of any of those exempted from the operations of this Act from contracting for or receiving interest or charges not in violation of any existing applicable statute of this state." | indirectly, by purchase or discount, of a bona fide obligation for goods or services when such obligation is payable directly to the person who provided such goods or services, but the refinancing or extension of any such obligation with charges greater than twelve per cent per annum is subject to this article." |
| (c) The provisions of subsection (a) of this section shall apply to any person who seeks to evade its application by any device, subterfuge, or pretense whatsoever including, but not thereby limiting the generality of the foregoing: the loan, forbearance, use, or sale of credit (as guarantor, surety, endorser, co-maker, or otherwise), money, goods, or things in action; the use of collateral or related sales or purchases of goods or services, or agreements to sell or purchase, whether real or pretended; receiving or charging compensation for goods or services, whether or not sold, delivered, or provided; and the real or pretended negotiation, arrangement, or procurement of a loan through any use or activity of a third person, whether real or fictitious. | (c) Only first part of provision included, as follows: "The provisions of subsection (a) of this section shall apply to any person who seeks to evade its application by any device, subterfuge, or pretense whatsoever." | (c) This provision was incorporated as part of the following subsection relating to penalties. |
| (d) Any person and the several members, officers, directors, agents, and employes thereof, who shall violate or participate in the violation of any provision of subsection (a) of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than $1,000 and not less than $100, or by imprisonment of not more than six months, or by both such fine and imprisonment, in the discretion of the court. Any contract of loan in the making or collection of which any act shall have been done which violates subsection (a) of this section shall be void and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever. | (d) Penalty for violation of subsection (a) reduced to a fine of not less than $25 nor more than $300 or by imprisonment for not more than 30 days, or by both such fine and imprisonment. Last sentence of subsection (d) included in 1943 act. | (d) Maximum for fine increased to $500; imprisonment provisions removed. Last sentence retained. |
| Section 3. Application for a license shall be in writing, under oath, and in the form prescribed by the Commissioner. The application shall give the exact location where the business is to be conducted and shall contain such further relevant information as the Commissioner may require, including the names and addresses of the partners, officers, directors, or trustees, and of such of the principal owners or members as will provide the basis for the investiations and findings contemplated by Section 4 of this Act. At the time of making such application, the applicant shall pay to the Commissioner the sum of $50 as a fee for investigating | Section 3. Information required on application form was spelled out in more detail than in uniform draft. Also, fees differed from those proposed in the uniform draft. These fees were $50 for investigating an application under the 1943 act, with annual license fees as follows:<br><br>(1) $100 when business is conducted in a city or city and county of less than | 73-3-4, C.R.S. 1963. Essentially the same provisions as 1943 act. |

| Seventh Draft of the Uniform Small Loan Law As Revised June 1, 1942 | 1943 Colorado Small Loan Act | 1955 Colorado Consumer Finance Act, As Amended |
|---|---|---|
| the application and the sum of $100 as a license fee for the period ending on the last day of the current calendar year; provided, that if the license is granted after June thirtieth in any year the license fee shall be $50. | 30,000 population.<br><br>(2) $150 when business is conducted in a city or city and county of from 30,001 to 100,000 population.<br><br>(3) $250 when business is conducted in a city or city and county of more than 100,000 population. | |
| Section 4. (a) Upon the filing of such application and the payment of such fees, the Commissioner shall investigate the facts concerning the application and the requirements provided for in subsection (b) of this section. At least twenty days before entering the order granting or denying such application, he shall mail a notice of the receipt of the application to each licensee having a place of business in the community where the applicant proposes to do business and he may mail such a notice to such other persons, associations and institutions as he may see fit. The Commissioner shall grant or deny each application for a license within sixty days from the filing thereof with the required information and fees unless the period is extended by written agreement between the applicant and the Commissioner. | Section 4. (a) Hearing required before granting or denying a license, with notice to be sent to existing licensees in community at least seven days before the date of such hearing. Commissioner required to grant or deny license within 45 days from the filing of the license application. | 73-3-5, C.R.S. 1963. (a) Essentially the same provisions as 1943 act except that time within which commissioner must act was reduced from 45 to 30 days. |
| (b) If the Commissioner shall find (1) that the financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly, and efficiently, within the purposes of this Act, and (2) that allowing such applicant to engage in business will promote the convenience and advantage of the community in which the licensed office is to be located, and (3) that the applicant has available for the operation of such business at the specified location liquid assets of at least $20,000, he shall thereupon enter an order granting such application, and file his findings with the Department, and forthwith issue and deliver a license to the applicant. | (b) Finding "that allowing such applicant to engage in business will promote the convenience and advantage of the community in which the licensed office is to be located" was not included in 1943 act. Also, minimum liquid assets figure set at $5,000 if licensee to be located in a city of 20,000 or less population and at $25,000 if in a city or city and county having a population of more than 20,000 population. | (b) Same "findings" as in 1943 act, but requirements for minimum liquid assets were not included. Statement added that "such license shall be a continuing license until surrendered, revoked or suspended as hereinafter provided," as contained in Sec. 5 (b) of uniform draft. |
| (c) If the Commissioner shall not so find, he shall enter an order denying such application and forthwith notify the applicant of the denial, returning the license fee but retaining the investigation fee. Within ten days after the entry of such an order he shall file with the Department his findings and a summary of the evidence supporting them and shall forthwith deliver a copy thereof to the applicant. | (c) Essentially same as uniform draft except that commissioner given 30 days within which to file his written findings. | (c) Essentially the same provisions as in 1943 act except that commissioner must file his written findings within 15 instead of 30 days. |

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| Section 5. (a) Each license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a co-partnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Each license shall be kept conspicuously posted in the licensed place of business and shall not be transferable or assignable. | Section 5. (a) First sentence changed to read: "Each license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a co-partnership or association, the names of the members thereof, or, the trade name under which the licensee may desire to conduct such business." Same second sentence as in uniform draft. | 73-3-6, C.R.S. 1963. (a) Same as 1943 act. |
| (b) Each license shall remain in full force and effect until surrendered, revoked, or suspended as hereinafter provided. Every licensee shall, on or before the tenth day of each December, pay to the Commissioner the sum of $100 for each license held by him, as a license fee for the succeeding calendar year. | (b) License fee as set out in Sec. 3 of this act payable on or before December 20th of each year. | (b) Same as 1943 act. |
| (c) Every licensee shall maintain assets of at least $20,000 either used or readily available for use in the conduct of the business of each licensed office. | (c) Minimum assets to be maintained as set forth in Sec. 4 (b) of this act. | (c) No provision included in this section relating to minimum assets. |
| | (d) 1943 act contained prohibition against any licensee engaging in the business of banking or using the words "bank," "banker," or "banking" with respect to its activities. Each licensee was also prohibited from accepting deposits or issuing certificates of indebtedness except that "the foregoing prohibition shall not limit the right of any licensee to borrow money or to issue notes, bonds, debentures, or similar evidences of indebtedness labelled as such for the purpose of obtaining capital for use in its business." | (d) Same as 1943 act. |
| Section 6. (a) Not more than one place of business shall be maintained under the same license, but the Commissioner may issue additional licenses to the same licensee upon compliance with all the provisions of this Act governing issuance of a single license. | Section 6. (a) Same as uniform draft. | 73-3-7, C.R.S. 1963. (a) Essentially same as 1943 act. |
| (b) No change in the place of business of a licensee to a location outside of the original city or town shall be permitted under the same license. When a licensee wishes to change his place of business within the same city or town, he shall give written notice thereof to the Commissioner who shall investigate the facts and, if he shall find (1) that allowing the licensee to engage in business in the proposed location is not detrimental to the convenience and advantage of the community and (2) that the | (b) Essentially same first sentence as uniform draft. Remainder of subsection changed to read: "When a licensee changes his place of business within the same city or city and county, he shall give written notice thereof to the Commissioner." | (b) Essentially same as 1943 act. |

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| proposed location is reasonably accessible to borrowers under existing loan contracts, he shall enter an order permitting the change and shall amend the license accordingly. If the Commissioner shall not so find he shall enter an order denying the licensee such permission in the manner specified in and subject to the provisions of section 4 (c) of this Act. | | |
| (c) Nothing in this Act shall be construed to limit the loans of any licensee to residents of the community in which the licensed place of business is situated. | (c) Same as uniform draft. | (c) Essentially same as 1943 act. |
| Section 7. (a) The Commissioner shall, upon ten days' written notice to the licensee stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, revoke any license issued hereunder if he finds that:<br><br>1. The licensee has failed to pay the annual license fee; or that<br><br>2. The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this Act or any regulation or order lawfully made pursuant to and within the authority of this Act; or that<br><br>3. Any fact or condition exists which, if it had existed or had been known to exist at the time of the original application for such license, clearly would have justified the Commissioner in refusing originally to issue such license. | Section 7. (a) Essentially same as uniform draft. | 73-3-8, C.R.S. 1963. (a) The follow-cause for revocation, which was contained in the uniform draft and the 1943 act, was not included: "Any fact or condition exists which, if it had existed or had been known to exist at the time of the original application for such license, clearly would have justified the Commission in refusing originally to issue such license." |
| (b) If the Commissioner finds that probable cause for revocation of any license exists and that enforcement of the Act requires immediate suspension of such license pending investigation, he may, upon three days' written notice and a hearing, enter an order suspending such license for a period not exceeding thirty days. | (b) Essentially same as uniform draft. | (b) Same as 1943 act. |
| (c) Whenever the Commissioner shall revoke or suspend a license issued pursuant to this Act, he shall enter an order to that effedt and forthwith notify the licensee of the revocation or suspension. Within five days after the entry of such an order he shall file with the Department his findings and a summary of the evidence supporting them and he shall forthwith deliver a copy thereof to the licensee. | (c) First sentence essentially the same as uniform draft. Second sentence was not included in this subsection. | (c) Same as 1943 act. |

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| (d) Any licensee may surrender any license by delivering it to the Commissioner with written notice of its surrender, but such surrender shall not affect his civil or criminal liability for acts committed prior thereto. | (d) Same as uniform draft. | (d) Essentially same as 1943 act. |
| (e) No revocation, suspension, or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any borrower. | (e) Essentially same as uniform draft. | (e) Same as 1943 act. |
| (f) The Commissioner may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked if no fact or condition then exists which clearly would have justified the Commissioner in refusing originally to issue such license under this Act. | (f) Same as uniform draft. | (f) Essentially same as 1943 act. |
| <u>Section 8</u>. (a) At least once each year the Commissioner or his duly authorized representatives shall make an examination of the place of business of each licensee and of the loans, transactions, books, papers, and records of such licensee so far as they pertain to the business licensed under this Act. The actual cost of examination shall be paid to the Commissioner by each licensee so examined, and the Commissioner may maintain an action for the recovery of such costs in any court of competent jurisdiction. | <u>Section 8</u>. (a) Same first sentence as uniform draft. Second sentence in (a) of uniform draft not included. | <u>73-3-9, C.R.S</u>. (a) Same as 1943 act. |
| (b) For the purpose of discovering violations of this Act or of securing information lawfully required hereunder, the Commissioner or his duly authorized representatives may at any time investigate the business and examine the books, accounts, papers, and records used therein, of (1) any licensee, (2) any other person engaged in the business described in sub-section 2 (a) of this Act or participating in such business as principal, agent, broker, or otherwise, and (3) any person who the Commissioner has reasonable cause to believe is violating or is about to violate any provision of this Act, whether or not such person shall claim to be within the authority or beyond the scope of this Act. For purposes of this section, any person who shall advertise for, solicit, or hold himself out as willing to make loan transactions in the amount or of the value of $300 or less shall be presumed to be engaged in the business described in sub-section 2 (a) of this Act. | (b) Generally same as uniform draft -- words "or is about to violate" were not included. | (b) Essentially same as 1943 act -- applies to loan transactions of $1,500 or less rather than to those of $300 or less. |
| (c) For the purposes of this section, the Commissioner or his duly authorized representatives shall have and be given free access to the offices and places of business, files, safes, and vaults of all such persons, and shall have authority to require the attendance of any person and to examine him under oath relative to such loans or such business or to the | (c) Same as uniform draft. | (c) Essentially same as 1943 act. |

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| subject matter of any examination, investigation, or hearing. | | |
| (d) Whenever the Commissioner has reasonable cause to believe that any person is violating or is threatening to or intends to violate any provision of this Act, he may in addition to all actions provided for in this Act and without prejudice thereto enter an order requiring such person to desist or to refrain from such violation; and an action may be brought on the relation of the Attorney General and the Commissioner to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining there or so much thereof as the court may deem reasonably necessary to prevent violations of this Act through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall from time to time be conferred upon him by the court. | (d) Same as uniform draft. | (d) Same as 1943 act. |
| Section 9. (a) Each licensee shall keep and use in his business such books, accounts, and records as will enable the Commissioner to determine whether such licensee is complying with the provisions of this Act and with the orders and regulations lawfully made by the Commissioner hereunder. Each licensee shall preserve such books, accounts, and records for at least two years after making the final entry on any loan recorded therein. | Section 9. (a) Same as uniform draft. | 73-3-10, C.R.S. 1963, as amended -- (a) Same as 1943 act. |
| (b) Each licensee shall annually on or before the first day of March file a report with the Commissioner giving such relevant information as he may reasonably require concerning the business and operations during the preceding calendar year for each licensed place of business conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the Commissioner, who shall make and publish annually an analysis and recapitulation of such reports. | (b) Filing deadline changed to April 1st. | (b) Generally the same as 1943 act -- contents of reports specified in law such as financial statement of licensee, assets, income and expences, legal actions undertaken to effect collections, etc. |
| Section 10. (a) The Commissioner shall have authority to make regulations and orders for the administration and enforcement of this Act, in addition hereto and not inconsistent herewith. Every regulation shall be promulgated by an | Section 10. (a) Copies of order to be mailed at least 15 days prior to effective date. | 73-3-11, C.R.S. 1963. (a) Copies of order to be mailed at least 30 days prior to effective date. |

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| order, and any ruling, demand, requirement, or similar administrative act may be promulgated by an order. Every order shall be in writing, shall state its effective date and the date of its promulgation, and shall be entered in an indexed permanent book which shall be a public record. A copy of every order promulgating a regulation and of every other order containing a requirement of general application shall be mailed to each licensee at least ten days before the effective date thereof. | | |
| (b) On application of any person and payment of the costs thereof, the Commissioner shall furnish, under his seal and signed by him or his deputy, a certified copy of any license, regulation, or order. In any court or proceeding such copy shall be prima facie evidence of the fact of the issuance of such license, regulation, or order. | (b) Same as uniform draft. | (b) Same as 1943 act. |
| Section 11. (a) No licensee or other person subject to this Act shall advertise, display, distribute, or broadcast or cause or permit to be advertised, displayed, distributed, or broadcast, in any manner whatsoever, any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for loans in the amount or of the value of $300 or less. The Commissioner may require that charges or rates of charge, if stated by a licensee, be stated by a licensee, be stated fully and clearly in such manner as he may deem necessary to prevent misunderstanding thereof by prospective borrowers. The Commissioner may permit or require licensees to refer in their advertising to the fact that their business is under state supervision, subject to conditions imposed by him to prevent an erroneous impression as to the scope or degree of protection provided by this Act. | Section 11. (a) Generally same as uniform draft -- word "charges" used instead of "rates" in first sentence. | 73-3-12, C.R.S. 1963. (a) Last part of first sentence changed to read: "With regard to the charges for or terms of loans." |
| (b) Each licensee shall display in each licensed place of business a full and accurate schedule of the rates of charge upon all classes of loans currently to be made by him. | (b) Not included in 1943 act. | (b) Not included in 1955 act. |
| Section 12. (a) No licensee shall conduct the business of making loans under this Act within any office, suite, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction with any other business, unless authority to do so is given by the Commissioner. Upon receipt of written application for such authority the Commissioner shall investigate the facts and, if he finds that the character of the licensee and the nature of the other business warrant belief that such conduct of business would not conceal or facilitate violation or evasion of this Act or of regulations lawfully made hereunder, he shall enter an order granting such authority. If he shall not so | Section 12. (a) Not included in 1943 act. | 73-3-13, C.R.S. 1963. (a) Not included in 1955 act. |

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| find he shall enter an order denying such authority in the manner specified in and subject to the provisions of section 4 (c) of this Act. | | |
| (b) No licensee shall conduct the business of making loans provided for by this Act under any name, or at any place of business within this state, other than that stated in the license. | (b) Same as uniform draft. | (b) Same as 1943 act. |
| (c) No licensee shall take a lien upon real estate as security for any loan made under this Act, except such lien as is created by law through the rendition or recording of a judgment. | (c) Not included in 1943 act. | (c) Not included in 1955 act. |
| Section 13. (a) Every licensee hereunder may contract for and receive, on any loan of money not exceeding $300 in amount, charges at a rate not exceeding 3 per cent a month on that part of the unpaid principal balance of any loan not in excess of $100, and 2 per cent a month on any remainder of such unpaid principal balance. No licensee shall induce or permit any person, nor any husband and wife, jointly or severally, to become obligated, directly or contingently or both, under more than one contract of loan at the same time, for the purpose of obtaining a higher rate of charge than would otherwise be permitted by this section. | Section 13. (a) First sentence changed to read: "Every licensee hereunder may contract for and receive, on any loan of money not exceeding $300 in amount, charges at a rate not exceeding 3½ per cent per month on that part of the unpaid principal balance of any loan not in excess of $150, and 2½ per cent per month on any remainder of such unpaid principal balance." Second sentence the same as in uniform draft. | 73-3-14, C.R.S. 1963. (a) Maximum loan total increased to $1,500 with charges not to exceed: "3 per cent per month upon that part of the loan not exceeding $300.00; 1½ per cent per month upon that part of the loan in excess of $300.00 and not exceeding $500.00; 1 per cent per month upon that part of the loan exceeding $500.00 and not exceeding $1,500.00."<br><br>Second sentence of Section 13 (a) of uniform draft expanded and placed in separate subsection of 1955 act as follows:<br><br>"(6) (a) No licensee shall induce or permit any person, nor husband and wife, jointly or severally, to become obligated upon more than one contract of loan at the same time under the provisions of this article for the purpose of obtaining a higher rate of charges than would otherwise be permitted by this article provided that the foregoing prohibition shall not apply to loans made to comakers or guarantors upon their own behalf.<br><br>"(b) In the event an additional loan shall be made by a licensee to a borrower having an existing loan or loans with such licensee then such additional loan shall bear such charges as permitted hereunder as though such additional amount of loan had been |

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(b) Charges on loans made under this Act shall not be paid, deducted, or received in advance. Such charges shall not be compounded; provided that, if part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under such loan contract may include any unpaid charges on the prior loan which have accrued within sixty days before the making of such loan contract. Such charges shall (1) be computed and paid only as a percentage per month of the unpaid principal balance or portions thereof, and (2) be so expressed in every obligation signed by the borrower, and (3) be computed on the basis of the number of days actually elapsed. For the purpose of computing charges, whether at the maximum rate or less, a month shall be any period of 30 consectuve days and the rate of charge for each day shall be 1/30th of the monthly rate.

**1943 Colorado Small Loan Act**

(b) Same as uniform draft.

**1955 Colorado Consumer Finance Act, As Amended**

consolidated into and added to the then existing balance of such prior loan or loans.

"(c) The provisions of this subsection (6) shall apply to the making of loans to the same borrower by licensees controlled, owned or operated by the same parent company, corporation, association, partnership or individuals, notwithstanding that such licensees may be operating under separate licenses or other corporate or trade names, and for the purposes of this subsection (6) all such controlled, owned, or operated licensees shall be considered as the same licensee and governed by and be subject to the restrictions of this subsection (6)."

(b) Expressed as Subsection (1) (b) and Subsection (2) in 1955 act, including new language authorizing precalculation of charges and adding this total to the amount of the loan. The 1955 language is as follows:

"(1) (b) Charges made upon loans under this article shall not be paid, deducted or received in advance. A licensee may express said charges in the instrument evidencing said loan as a per cent per month of the actual unpaid principal balance or portions thereof for the time actually outstanding and collect such charges upon said basis until the loan is fully paid; or precalculate the aggregate total of such charges which would be earned at the agreed rate if the loan were paid exactly according to the agreed payment schedule and add the same to the amount of the loan. For the purpose of computing such charges a month shall be considered as a calendar month and charges for any fractional portion of a month may be computed for each elapsed day at one-thirtieth of the monthly rate contracted for.

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| | | "(2) A licensee making and collecting a loan upon which charges are computed and collected upon a per cent per month basis, as above permitted, shall not compound such charges, provided that, if part or all of the consideration for a contract of loan is the unpaid principal balance of a prior loan, then the principal amount payable under such contract of loan may include any unpaid charges which have accrued within sixty days on the prior loan; and provided further, that such charges shall be computed on the basis of the number of days actually elapsed." |
| (c) In addition to the charges herein provided for, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received. If any amount in excess of the charges permitted by this Act is charged, contracted for, or received, except as the result of an accidental and bona fide error of computation, the contract of loan shall be void, and the licensee shall have no right to collect or receive any principal, charges, or recompense whatsoever; and the licensee and the several members, officers, directors, agents, and employes thereof who shall have participated in such violation, shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than $1,000 and not less than $100 or by imprisonment of not more than six months, or by both such fine and imprisonment, in the discretion of the court. | (c) Penalty reduced to a fine of not more than $300 or imprisonment for not more than 30 days, or both. | (c) In cases of exessive charges, penalty reduced substantially by 1955 act. Both the uniform draft and the 1943 act voided such contracts and licensees had "no right to collect or receive any principal, charges, or recompense whatsoever;" but the 1955 act allows such loan contracts to be enforceable "as to the amount advanced thereunder, including advances for insurance premiums, and the licensee shall not be permitted to recover or retain the charges thereon." The criminal penalty in the 1955 act was changed to "a fine of not exceeding five hundred dollars;" no provision for imprisonment was included. |
| | | NOTE: Additional provisions are included in the 1955 act, such as in the case of prepayments, and these provisions are as follows: |
| | | "(3) (a) The following requirements shall apply to a licensee who precalculates charges and adds the same to the amount of the loan: |
| | | "(b) If prepayment in full, by cash, renewal or refinancing occurs within sixty days from date of making said loan, or in the event the contract |

of loan does not provide for substantially equal consecutive monthly installments, the licensee shall recalculate charges thereon and collect the same, at the per cent per month rate used to precalculate the charges originally added to the amount of the loan upon the actual unpaid principal balances of the loan for the time actually outstanding.

"(c) If the contract of loan provides for repayment thereof in substantially equal consecutive monthly installments and if prepayment in full by cash, renewal or refinancing occurs after a period of sixty days from the date of the making of said loan, it shall be sufficient to refund or credit to the borrower that proportion of the total charges which the sum of the monthly balances scheduled to follow the installment date nearest the date of prepayment bears to the sum of all monthly balances scheduled by the original contract of loan.

"(d) A licensee may charge, contract for and collect a sum not exceeding two per cent per month, computed upon a daily basis, of the amount in arrears upon a contract of loan, provided that such delinquency charges collected shall be a credit if recalculation is made as provided, in paragraph (b) of subsection (3) of this section.

"(e) If maturity of a loan contract is accelerated and the contract is paid in full or judgment is entered thereon before the maturity originally scheduled by the contract, the licensee shall reduce the balance by a credit of a portion of the charges computed in the same manner as though said loan had been prepaid in full by cash, renewal or refinancing, and any judgment entered upon such contract of loan shall take into account such reduction.

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| | | "(4) Lawful fees, if any, actually and necessarily paid out by the licensee to any licensed abstract company, or to any public officer for the filing, noting a motor vehicle lien upon a certificate of title, releasing or recording in any public office any instrument securing the loan or releasing an existing lien may be collected from the borrower or become a part of the amount of the loan. |
| | | "(5) In the event of suit upon any contract evidencing a loan made hereunder the court may allow a reasonable attorney's fee for collection thereof together with costs expended therein. Upon foreclosure of a trust deed through the public trustee costs of such foreclosure and a reasonable attorney's fee shall be permitted." |
| | | "(8) (a) The following types of insurance may be written in connection with loans made by licensees under this article: |
| | | "(b) Upon motor vehicles, fire, theft, windstorm; or comprehensive, including fire, theft and windstorm; deductible collision securing the loan; property damage and public liability insurance. |
| | | "(c) Fire and extended coverage insurance upon tangible property when offered as security for a loan under this article for an amount and terms and upon conditions which are reasonable and appropriate considering the nature of the property and the amount and maturity of the loan. |
| | | "(d) In connection with such insurance which is permitted under this subsection (8), a licensee may receive commissions on the premium paid for such insurance, provided, that such insurance shall be sold by or through a duly licensed insurance agent or |

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| | | broker and the premium shall not exceed the premium fixed pursuant to law or by current applicable manual of a recognized standard insurance rating bureau, which premium may be included in and become a part of the loan.<br><br>"(e) A licensee shall not require the purchasing of insurance from the licensee, or from an agent, broker or insurance company designated by the licensee, as a condition precedent to the making of the loan and shall not decline existing insurance when such existing insurance is provided by an insurance company duly licensed to do business in Colorado. If a borrower procures insurance by or through a licensee, the licensee shall deliver to the borrower, or if there are two or more borrowers to one of them, within fifteen days after the making of the loan, an executed copy of the insurance policy or a certificate of insurance." |
| Section 14. (a) Every licensee shall:<br><br>1. At the time any loan is made deliver to the borrower, or if there are two or more borrowers to one of them, a statement in the English language, on which shall be printed a copy of section 13 of this Act, disclosing in clear and distinct terms the amount and date of the loan, a schedule of payments or a description thereof, the type of the security, if any, for the loan, the name and address of the licensed office and of each person primarily obligated on the note and the agreed rate of charge;<br><br>2. For each payment made on account of any such loan, give to the person making it at the time the payment is made a plain and complete receipt specifying the amount applied to charges and the amount, if any applied to principal, and stating the unpaid principal balance, if any, of such loan; provided that an unitemized receipt may be given temporarily and replaced within a reasonable time with a receipt as prescribed above;<br><br>3. Permit payment to be made in advance in any amount on any contract of loan at any time, but the licensee may | Section 14. (a) Essentially the same as the uniform draft. In Subsection (a) (4), 1943 act added that licensee must restore any pledge and cancel and return any note and any assignment given to him "within a period of twenty days." | 73-3-15, 1963 C.R.S. (a) Revised to include references to insurance, if any; precalculated charges; additional charges, if any, which may be collected for delinquency; and the borrower's right to a refund or credit of a portion of the precalculated charges if the loan is prepaid in full. Provisions also included to recognize use of "payment" or "coupon" books. |

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| apply such payment first to all charges in full at the agreed rate up to the date of such payment; | | |
| 4. Upon repayment of the loan in full, mark plainly every obligation and security signed by any obligor with the word "Paid" or "Cancelled," and release any mortgage, restore any pledge, and cancel and return any note and any assignment given to the licensee. | | |
| (b) No licensee shall (1) take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding; nor (2) take any note, promise to pay, or instrument of security that does not disclose the amount of the loan, a schedule of payments or a description thereof, and the agreed rate of charge, nor any instrument in which blanks are left to be filled in after execution. | (b) Prohibition against confessions of judgment not included in 1943 act nor was reference to "instrument of security" in (2) included. 1943 act provided: "No licensee shall take any note or promise to pay which does not disclose the amount of the loan, a schedule of payments, or a description thereof, and the agreed rate of charge, nor any instrument in which blanks are to be filled in after execution." | (b) Revised more along the lines of the uniform draft than the 1943 act, to read: "No licensee shall take any note or promise to pay which does not disclose the amount of the contract of loan, a schedule of payments, or a description thereof, nor any instrument in which blanks are left to be filled in after execution. No licensee shall take a note providing for judgment by confession thereon." |
| (c) No licensee shall enter into any contract of loan under this Act under which the borrower agrees to make any payment of principal more than twenty-one calendar months from the date of making such contract. Every loan contract shall provide for repayment of principal and charges in installments which shall be payable at approximately equal periodic intervals of time and which shall be so arranged that no installment is substantially greater in amount than any preceding installment. | (c) Not included in 1943 act. | (c) Not included in 1955 act. |
| (d) Any contract of loan in the making or collection of which any provision of this section shall have been violated either knowingly or without the exercise of due care to prevent the same shall be void and the licensee shall have no right to collect or receive any principal, charges, or recompense whatsoever. | (d) Same as uniform draft. | (d) Not included in 1955 act. |
| Section 15. No licensee shall directly or indirectly charge, contract for, or receive a greater rate of interest than...upon any loan, or upon any part or all of any aggregate indebtedness of the same person, in excess of $300. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower or as endorser, guarantor, or surety for any borrower, or otherwise, or any husband and wife jointly or severally, to owe directly or contingently or both to the licensee at any time a sum of more than $300 for principal. | Section 15. Not included in 1943 act. (Loans in excess of $300 come under the provisions of the money lender's act, Article 2 of Chapter 73, C.R.S. 1963.)<br><br>NOTE: Section 15 (a) in 1943 act authorized licensees to require insurance on tangible property when offered as security for a loan and to receive commissions on the premiums paid for such insurance. Section 15 (b) of | NOTE: The 1955 act does not include a provision similar to Section 15 of the uniform draft; provisions relating to insurance, similar to those contained in Section 15 of the 1943 act, may be found in Article 4 of Chapter 73, C.R.S. 1963. |

| Seventh Draft of the Uniform Small Loan Law As Revised June 1, 1942 | 1943 Colorado Small Loan Act | 1955 Colorado Consumer Finance Act, As Amended |
| --- | --- | --- |
| | 1943 act authorized licensees to charge borrowers for any lawful fees paid for the filing or recording of any instrument securing the loan. | |
| Section 16. The payment of $300 or less in money, credit, goods, or things in action, as consideration for any sales or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, shall for the purposes of regulation under this Act be deemed a loan of money secured by such sale, assignment, or order. The amount by which such compensation so sold, assigned, or ordered paid exceeds the amount of such consideration actually paid shall for the purposes of regulation under this Act be deemed interest or charges upon such loan from the date of such payment to the date such compensation is payable. Such transaction shall be governed by and subject to the provisions of this Act. | Section 16. Same as uniform draft. | 73-3-16, C.R.S. 1963. Essentially same as uniform draft -- amount mentioned increased from $300 to $1,500. |
| Section 17. (a) No assignment of or order for payment of any salary, wages, commissions, or other compensation for services, earned or to be earned, given to secure any loan made by any licensee, shall be valid unless the amount of such loan is paid to the borrower simultaneously with its execution; nor shall any such assignment or order, or any chattel mortgage or other lien on household furniture then in the possession and use of the borrower, be valid unless it is in writing, signed in person by the borrower, or if the borrower is married unless it is signed in person by both husband and wife, provided that written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least five months prior to the making of such assignment, order, mortgage, or lien. | Section 17. (a) Generally same as uniform draft -- reference to five-month period of separation in last sentence not included in 1943 act. | 73-3-17, C.R.S. 1963. (a) and (b) Revised to read: "No assignment of wages, salary, commission or other compensation for services, whether earned or to be earned, shall be taken by any licensee hereunder to secure any loan made." |
| (b) A valid assignment or order for the payment of future salary, wages, commissions, or other compensation for services, may be given as security for a loan made by any licensee and under such assignment or order, a sum not to exceed 10 per cent of the borrower's salary, wages, commissions, or other compensation for services shall be collectible from the employer of the borrower by the licensee at the time of each payment to the borrower of such salary, wages, commissions, or other compensation for services from the time that a copy of such assignment, verified by the oath of the licensee or his agent, together with a similarly verified statement of the amount unpaid upon such loan and a printed copy of this section, is served upon the employer. | (b) Same as uniform draft. | |

| Seventh Draft of the Uniform Small Loan Law As Revised June 1, 1942 | 1943 Colorado Small Loan Act | 1955 Colorado Consumer Finance Act, As Amended |
|---|---|---|
| Section 18. No loan made outside this state in the amount or of the value of $300 or less for which a greater rate of interest, consideration, or charges than is permitted by section 13 of this Act has been charged, contracted for, or received shall be enforced in this state and every person in anywise participating therein in this state shall be subject to the provisions of this Act; provided that the foregoing shall not apply to loans legally made in any state under and in accordance with a regulatory small loan law similar in principle to this Act. | NOTE: Section 18 of uniform draft not included in 1943 draft. | NOTE: Section 18 of uniform draft not included in 1955 act. |
| Section 19. In addition to any other remedy he may have, any licensee and any person considering himself aggrieved by any act or order of the Commissioner hereunder may, within 30 days from the entry of the order complained of, or within 60 days of the act complained of if there is no order, bring an action in the ... Court to review such act or order. | Section 18. Essentially same as Section 19 of uniform draft -- action brought in district court. | 73-3-18, C.R.S. 1963. Essentially same as 1943 act -- action brought in district court in the City and County of Denver. |
| Section 20. This Act or any part thereof may be modified, amended,or repealed so as to effect a cancellation or alteration of any license or right of a licensee hereunder, provided that such cancellation or alteration shall not impair or affect the obligation of any pre-existing lawful contract between any licensee and any borrower. | NOTE: Section 20 of uniform draft not included in 1943 act. Section 20 of 1943 act related to authorization for personnel to administer and to enforce this act and their salaries. | NOTE: Section 20 of uniform draft not included in 1955 act. |
| Section 21. Any person having a license under ...., in force when this Act becomes effective, shall notwithstanding the repeal of the said Act, be deemed to have a license under this Act for a period expiring six months after the said effective date, if not sooner revoked, provided that such person shall have paid or shall pay to the Commissioner as a license fee for such six months' period the sum of $50. Any such license so continued in effect under the provisions of this Act shall be subject to revocation during such six months' period as provided in section 7 of this Act; except that it may not be revoked during such six months' period either upon the ground that such licensee has not maintained the minimum amount of assetts required in section 5 of this Act or upon the ground that the convenience and advantage of such community will not be promoted by the operation therein of such business. | Section 19. In the 1943 act, pre-existing licensees were authorized to receive a new license "without the necessity of making application therefore," and "without the requirement of the payment of any further or additional license fee for the current year," but "thereafter such license may be continued in force subject to the provisions of this Act by payment of an annual license fee in accordance with the provisions of Section 5 (c) hereof." | 73-3-20, C.R.S. 1963. Generally same as Section 19 of 1943 act except that licensees under the Money Lender's Act (article 2 of chapter 73, C.R.S. 1963) were required to make application for and pay the fee for a license under this 1955 Consumer Finance Act. |

| Seventh Draft of the Uniform Small Loan Law As Revised June 1, 1942 | 1943 Colorado Small Loan Act | 1955 Colorado Consumer Finance Act, As Amended |
|---|---|---|
| Section 22. (a) ... and all Acts and parts of Acts whether general, special, or local, which relate to the same subject matter as this Act, so far as they are inconsistent with the provisions of this Act, are hereby repealed.<br><br>(b) Nothing herein contained shall be so construed as to impair or affect the obligation of any contract of loan between any licensee under the said ... and any borrower, which was lawfully entered into prior to the effective date of this Act. | Section 21. Essentially same provisions as Section 22 (a) and (b) of uniform draft. | 73-3-19, C.R.S. 1963. Essentially same provisions as Section 22 (a) and (b) of uniform act. |
| Section 23. If any clause, sentence, section, provision, or part of this Act shall be adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not invalidate, impair, or affect the remainder of this Act, which shall remain in full force and effect. | Section 23. Severability clause. | NOTE: Severability clause included in 1955 act. |
| Section 24. This Act shall be known and may be cited as the /Name of state/ Small Loan Act. | Section 25. "This Act shall be known and may be cited as the 'Colorado Small Loan Act'."<br><br>NOTE: Section 22 of 1943 act provided: "Any loan lawfully made in any other state may be enforced in Colorado." | NOTE: Title of act contained in 73-3-1, C.R.S. 1963 -- "Colorado Consumer Finance Act."<br><br>NOTE: 73-3-21, C.R.S. 1963, contains the same provision as that in Section 22 of the 1943 act. |

## APPENDIX B

An Analysis of Yield Under
Colorado's Consumer Finance
Act Rates, an Exhibit of
Mr. Helmuth Miller's
Prepared Statement
Presented at Committee's
Meeting on April 29, 1966

## COLORADO

### Analysis of Yield Under Installment Loan Rate of 3% Per Month on First $300; 1 1/2% Per Month to $500; 1% Above to $1500

| Cash Advanced to Borrower | Contract Term | Total Cost | Average Dollars Per $100 Per Year | Effective Gross Rate When Paid in Full According to Contract* | |
|---|---|---|---|---|---|
| | | | | Monthly | Annual |
| $ 100 | 12 months | $ 20.48 | $ 20.48 | 3.00% | 36.00% |
| 200 | 15 months | 51.20 | 20.48 | 3.00 | 36.00 |
| 300 | 18 months | 92.16 | 20.48 | 3.00 | 36.00 |
| 400 | 20 months | 131.00 | 19.65 | 2.88 | 34.56 |
| 500 | 24 months | 184.96 | 18.50 | 2.72 | 32.64 |
| 600 | 24 months | 207.36 | 17.28 | 2.57 | 30.84 |
| 700 | 24 months | 226.64 | 16.19 | 2.42 | 29.04 |
| 800 | 24 months | 244.24 | 15.26 | 2.30 | 27.60 |
| 900 | 24 months | 260.64 | 14.48 | 2.19 | 26.28 |
| 1000 | 24 months | 276.32 | 13.82 | 2.10 | 25.20 |
| 1100 | 24 months | 291.52 | 13.25 | 2.02 | 24.24 |
| 1200 | 24 months | 306.48 | 12.77 | 1.95 | 23.40 |
| 1300 | 30 months | 401.90 | 12.37 | 1.88 | 22.56 |

* The percentage yield to maturity is approximately the same regardless of length of contract.

COLORADO
(Continued)

| Cash Advanced to Borrower | Contract Term | Total Cost | Average Dollars Per $100 Per Year | Effective Gross Rate When Paid in Full According to Contract* Monthly | Annual |
|---|---|---|---|---|---|
| $ 1400 | 30 months | $419.80 | $ 11.99 | 1.83% | 21.96% |
| 1500 | 30 months | 437.30 | 11.66 | 1.78 | 21.36 |

* * * * * * * * * * * *

| Cash Advanced to Borrower | Contract Term | Total Cost | Average Dollars Per $100 Per Year | Monthly | Annual |
|---|---|---|---|---|---|
| $ 100 | 12 months | $ 20.48 | $ 20.48 | 3.00% | 36.00% |
| 200 | 12 months | 40.96 | 20.48 | 3.00 | 36.00 |
| 300 | 12 months | 61.44 | 20.48 | 3.00 | 36.00 |
| 400 | 12 months | 78.32 | 19.58 | 2.88 | 34.56 |
| 500 | 12 months | 92.08 | 18.42 | 2.72 | 32.64 |
| 600 | 12 months | 103.68 | 17.28 | 2.56 | 30.72 |
| 700 | 12 months | 113.60 | 16.23 | 2.42 | 29.04 |
| 800 | 12 months | 122.80 | 15.35 | 2.29 | 27.48 |
| 900 | 12 months | 131.88 | 14.59 | 2.19 | 26.28 |
| 1000 | 12 months | 139.40 | 13.94 | 2.09 | 25.08 |
| 1100 | 12 months | 147.40 | 13.40 | 2.01 | 24.12 |
| 1200 | 12 months | 155.04 | 12.92 | 1.94 | 23.28 |
| 1300 | 12 months | 162.45 | 12.50 | 1.88 | 22.56 |
| 1400 | 12 months | 109.84 | 12.13 | 1.83 | 21.96 |
| 1500 | 12 months | 177.12 | 11.81 | 1.78 | 21.36 |

## APPENDIX C

Article 2, Chapter 85,
Colorado Revised
Statutes 1963, Relating
to the Licensing of
Transient Dealers

# ARTICLE 2

## Transient Dealers


85-2-1. Transient dealer defined.
85-2-2. Not to apply to interstate commerce.
85-2-3. Must obtain license.
85-2-4. License—how procured—fees.
85-2-5. Application—license—time limit.
85-2-6. County clerk to keep record.
85-2-7. Disposition of fees.
85-2-8. Exhibit license to officers.
85-2-9. Violation—license void.
85-2-10. Penalty.
85-2-11. False statement—fraud—penalty.
85-2-12. License restricted to one person.
85-2-13. Jurisdiction of courts.


**85-2-1. Transient dealer defined.**—The term "transient dealer," for the purposes of this article, shall mean and include any person, either principal or agent, who engages in the business of traveling about carrying with him for sale and selling manufactured goods, wares or merchandise. It shall also include peddlers and hawkers of manufactured goods, wares and merchandise.

Source: L. 11, p. 632, § 1; C. L. § 4855; CSA, C. 166, § 1; CRS 53, § 85-2-1.

**85-2-2. Not to apply to interstate commerce.**—The provisions of this article shall not apply to any sale, act or thing the regulation or licensing of which would constitute regulation or licensing of interstate commerce. The provisions of this article shall not apply to any sale, act or thing permitted by the constitution or any law of the United States.

Source: L. 11, p. 632, § 2; C. L. § 4856; CSA, C. 166, § 2; CRS 53, § 85-2-2.

**85-2-3. Must obtain license.**—Except as permitted by section 85-2-2, it shall not be lawful for any person to be engaged in the business of a transient dealer, as defined by section 85-2-1 in any county in this state, unless such person shall be first duly licensed under the provisions of this article.

Source: L. 11, p. 633, § 3; C. L. § 4857; CSA, C. 166, § 3; CRS 53, § 85-2-3.

Cross reference: For penalty for operating business without a license, compare 39-15-13 and 85-1-6.

**85-2-4. License—how procured—fees.**—(1) (a) Every person, before transacting any business as a transient dealer either as principal or agent, in any county in this state, except as permitted in section 85-2-2, shall first procure from the county clerk of the county in which such person intends or desires to engage in the business of a transient dealer, a written or printed license to engage in the business of a transient dealer in that county, and pay to the county clerk of that county the following named fee for such license:

(b) For each transient dealer, traveling on foot, fifteen dollars;

(c) For each transient dealer, traveling on a bicycle or tricycle, twenty-five dollars;

(d) For each transient dealer, traveling by carriage or other vehicle drawn by one horse or other animal, fifty dollars;

(e) For each transient dealer, traveling by carriage or other vehicle drawn by two or more horses, or other animals, seventy-five dollars;

(f) For each transient dealer, traveling by automobile, motorcycle, or other self-propelling carriage, one hundred dollars;

(g) For each transient dealer, traveling in any other manner, one hundred twenty-five dollars.

Source: L. 11, p. 633, § 4; C. L. § 4858; CSA, C. 166, § 4; CRS 53, § 85-2-4.

**85-2-5. Application—license—time limit.**—Every person who procures a transient dealer's license shall make application in writing therefor to the county clerk of the proper county, and pay the proper license fee. The application shall state the name and the residence of the applicant, whether he transacts the business of a transient dealer as a principal or as an agent, and if as an agent the name and residence and place of business of his principal, also the kind or classes of goods, wares and merchandise that he proposes to sell as a transient dealer in that county, and the particular manner in which he proposes to travel in that county as a transient dealer, whereupon the county clerk shall issue to the applicant a written license authorizing him to engage in business as a transient dealer in that county for one year from the date of issuing such license, in the particular manner as applied for in the application, the substance of which application shall be stated in the license. All licenses shall be numbered consecutively, signed by the county clerk or his deputy and sealed with the seal of the county where issued, and no such license shall be transferable.

Source: L. 11, p. 633, § 5; C. L. § 4859; CSA, C. 166, § 5; CRS 53, § 85-2-5.

**85-2-6. County clerk to keep record.**—Each county clerk shall keep on file each application made to him for a license, a duplicate copy of each license issued by him, all papers filed with him in connection with any license issued by him, and he shall keep a record of all license fees paid to him, and of the cancellation of any and all licenses issued by him that may be canceled, and all such files and records, at all times, shall be open to public inspection.

Source: L. 11, p. 634, § 6; C. L. § 4860; CSA, C. 166, § 6; CRS 53, § 85-2-6.

**85-2-7. Disposition of fees.**—All fees paid to clerks of counties for licenses issued under the provisions of this article shall be for the use of the county in which the license is issued.

Source: L. 11, p. 634, § 7; C. L. § 4861; CSA, C. 166, § 7; CRS 53, § 85-2-7.

**85-2-8. Exhibit license to officers.**—Every person licensed as a transient dealer, whenever his license is demanded of him by any sheriff, magistrate, or police officer of any county in which such transient dealer may be engaged in business, shall forthwith exhibit his license for examination by such officer, and if he neglects or refuses so to do, he shall be subject to the same penalty as if he had no license.

Source: L. 64, ch. 40, § 26.

**85-2-9. Violation—license void.**—The license of any person who may be convicted of a violation of any provisions of this article, from the date of such conviction, shall be void, and shall be canceled on the records of the county clerk.

Source: L. 11, p. 634, § 9; C. L. § 4863; CSA, C. 166, § 9; CRS 53, § 85-2-9.

**85-2-10. Penalty.**—Every person who unlawfully engages in the business of a transient dealer in any county of this state and every person who in any county in this state transacts any business which under the provisions of section 85-2-1 would make him a transient dealer, without having a valid license therefor shall be punished by a fine of not less than ten dollars and not more than one hundred dollars, or by imprisonment in the county jail for a period of not less than ten days and not more than ninety days, or by both such fine and imprisonment.

Source: L. 11, p. 634, § 10; C. L. § 4864; CSA, C. 166, § 10; CRS 53, § 85-2-10.

**85-2-11. False statement—fraud—penalty.**—No person shall make any false or untrue statement in an application for a license as a transient dealer. No transient dealer shall commit any fraud in the transaction of his business as a transient dealer, sell any manufactured goods, wares or merchandise by any false or short weight or measure, or sell any goods, wares or merchandise as being composed or manufactured in whole or in part of material or ingredients different from which such manufactured goods, wares or merchandise are actually composed or manufactured, or sell any manufactured goods, wares or merchandise which are partly or entirely of a poisonous or injurious character or nature, for consumption of human beings, animals or fowls, or for application to the body, hair or skin of any human being or animal. Every person who shall be convicted of a violation of any provision of this section shall be punished by a fine of not less than ten dollars, and not more than one hundred dollars, or by imprisonment in the county jail for not less than ten days, and not more than one year, or by both such fine and imprisonment.

Source: L. 11, p. 635, § 11; C. L. § 4865; CSA, C. 166, § 11; CRS 53, § 85-2-11.

**85-2-12. License restricted to one person.**—No more than one individual person shall engage in business or operate under the same transient dealer's license, whether as principal or agent or as assistant to any principal or any agent.

Source: L. 11, p. 635, § 12; C. L. § 4866; CSA, C. 166, § 12; CRS 53, § 85-2-12.

**85-2-13. Jurisdiction of courts.**—County courts shall have jurisdiction, concurrent with district courts, to hear, try and determine all actions, and all criminal proceedings arising under this article, or brought for the violation of any provision of this article.

Source: L. 64, ch. 39, § 221.