

1970

Enforcement under the UCCC

Minn. L. Rev. Editorial Board

Follow this and additional works at: <https://scholarship.law.umn.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Editorial Board, Minn. L. Rev., "Enforcement under the UCCC" (1970). *Minnesota Law Review*. 2982.
<https://scholarship.law.umn.edu/mlr/2982>

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Law Review collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.

Enforcement Under the UCCC

I. INTRODUCTION

The draftsmen of the Uniform Consumer Credit Code (UCCC) apparently reached the conclusion that a statute of such wide scope would be totally ineffective unless adequate enforcement provisions were included. Consequently, the UCCC contains enough tools to allow the injured consumer to obtain redress for his grievances from the transgressive creditor. It is the intent of this section of the Symposium to present a comparative analysis of the enforcement provisions for credit transactions under the UCCC and under present Minnesota law.

To understand the array of enforcement provisions in the UCCC, the draftsmen's underlying assumptions must be considered. Past experience has shown that small recoveries, consumer ignorance and the high cost of attorneys' fees make dependence upon private remedies such as civil suits inadequate to deal with the problems of protecting the vast majority of consumers.¹ Allowing larger civil recoveries is not a viable solution. It would merely stimulate creditors, who are relatively more affluent than consumers, to fight consumers' suits more vigorously thereby increasing the cost of prosecuting and defending consumer suits. Facing such opposition may compel the consumer to decide that the risk involved—he must pay his own attorneys' fees should he lose—is too great and he may forego a valid civil remedy. Increasing criminal penalties is another possibility. Such penalties are not inherently ineffective because criminal prosecution or the threat of it should theoretically provide any creditor with the requisite incentive to comply. Practically speaking, however, this incentive is not provided by statutory criminal sanctions because district attorneys do not like to prosecute taxpaying, politically aware businessmen over matters which involve such technical wrongs as often occur in UCCC violations.² One commentator who considered this problem concluded:

Yet, even when a law enforcement official believes that a particular scheme has been made actionable by statute, he often does not prosecute because of a widely held belief that, except in the most egregious circumstances, fraudulent operators should not

1. See Warren, *The Uniform Consumer Credit Code*, 24 BUS. LAW. 209, 213-14 (1968); Rice, *Remedies, Enforcement Procedures and the Duality of Consumer Transaction Problems*, 48 BOST. U. L. REV. 559, 567 (1968); Jordan & Warren, *The Uniform Consumer Credit Code*, 68 COLUM. L. REV. 387, 422 (1968).

2. Jordan & Warren, *supra* note 1, at 418.

be treated like criminals. Lawyers, business leaders and prosecutors have stated that "judges, juries and district attorneys do not like to put businessmen in jail." One district attorney, when asked by the attorney general to prosecute an alleged fraudulent operator, retorted: "I can't even get a conviction when they stick a gun in somebody's back, how can I get one when they just talk him out of his money?"

In addition, in the relatively few cases where convictions are obtained, many of the violators receive exceedingly mild treatment.³

To solve the problem of providing sufficient consumer protection without drastically increasing the cost of credit, the draftsmen chose to provide for an administrator as the nucleus of the enforcement provisions.⁴ As such, this administrator is given an assortment of legal means of enforcement so that he can have the necessary flexibility to cope with the schemes of ingenious creditors with effective legal authority as well as the ability to use informal methods gently to coax violators into compliance. These devices range from the moderate "Assurance of Discontinuance" provision⁵ to the revocation of a supervised lender's license.⁶ These enforcement powers, if used diligently and forcefully, should be sufficient to assure substantial compliance with the UCCC's provisions. Nevertheless, the enforcement provided by this administrative nucleus cannot be expected to guarantee that specific consumers will not be harmed.

3. Note, *Translating Sympathy for Deceived Consumers into Effective Programs for Protection*, 114 U. PA. L. REV. 395, 426-27 (1966).

4. "The draftsmen of the UCCC have been quite explicit in their preference for enforcement through a public agency rather than through action by private individuals." Spanogle, *Why Does the Proposed Uniform Consumer Credit Code Eschew Private Enforcement?*, 23 BUS. LAW. 1039 (1968).

5. The "Assurance of Discontinuance" provision may be used when it is claimed that a person has violated an order of a court or the Administrator. The Administrator may then accept an assurance in writing from the violator that he will not engage in the conduct in the future. If the violator fails to comply with the terms of the assurance, the assurance will be evidence that prior to signing it he engaged in the conduct described in the assurance. UCCC § 6.109.

6. UCCC § 3.504. A supervised lender is a person authorized to make or take assignments of a regulated loan in which the loan finance charge exceeds 18 percent per year as determined according to the provisions on loan finance charges for consumer loans found in section 3.201. UCCC § 3.501.

The licenses of supervised financial organizations—those presently organized, chartered or holding an authorization certificate under the laws of Minnesota or of the United States which authorize the person to make loans and to receive deposits, including savings, share, certificate or deposit accounts, and those which are subject to supervision by an official or agency of Minnesota or of the United States (UCCC § 1.391(7))—will continue to be regulated by the agencies

Several justifications have been advanced for retention of enforcement power in positions outside the enforcement agency, while still providing for strong administrative enforcement. First, there is the possibility that the agency may become overly sympathetic to the regulated industry and may not, therefore, be sufficiently aggressive in carrying out its duties. Next, an avenue should be left open for individual consumers who wish to control their own lawsuits. Also, a consumer may wish to press a suit which the agency considers to be marginal based on its budget allocations.⁷ In addition to the justifications mentioned above, the UCCC's provision of private avenues of enforcement may become more important as the trend toward provision of more legal services to the poor and greater use of the class action continues. Allowance of attorneys' fees for victorious plaintiffs will also aid the debtor who strikes out on his own to secure his due remedy.⁸ Thus, these aids to the private enforcer are a hedge against the possibility of an industry dominated, complacent or inept administrative agency.⁹ The UCCC, therefore, provides a set of civil and criminal penalties to revolve around the administrator's enforcement activities and in addition provides means for relief in the individual cases where the administrative surveillance has not prevented an unscrupulous creditor from taking advantage of an individual consumer.

II. PRIVATE CIVIL REMEDIES

The UCCC, primarily in Article 5, Part 2, provides remedies which may be asserted by the individual consumer on his own behalf to obtain retribution for violations of the Code. These remedies may be divided into four categories: (1) remedies for

presently governing them. The licenses of such lenders may also be revoked under present Minnesota law. (See text accompanying footnotes 107-11 *infra*). As Administrator under the UCCC, the Commissioner of Banks will be the licensor of almost all "supervised financial organizations" as well as licensor of all "supervised lenders." Thus it can be expected that he will apply similar discretion in determining the circumstances under which revocation of a lender's license will be used as a means of enforcement.

7. See Spanogle, *supra* note 4, at 1039-41 for a discussion of these justifications.

8. Dunham, *Unconscionable Conduct and the Uniform Consumer Credit Code*, 23 J. FIN. 312, 316-17 (1968).

9. *Contra*, Shay, *The Uniform Consumer Credit Code: An Economist's View*, 54 CORNELL L. REV. 491, 519-20 (1969). Shay argues that due to the alienation and lack of self confidence among the urban poor—the group which is in greatest need of protection—the self-help measures of the UCCC will not be utilized by them.

violations of contract provisions; (2) remedies for excess charges; (3) remedies for disclosure violations, and (4) remedies for violations of the licensing provisions. An important, but easily overlooked, point is that the UCCC provides relatively short statutes of limitations for bringing these suits. The time allowed for these suits is usually one or two years,¹⁰ which makes necessary fairly prompt action following a violation. However, all civil remedies and refunds may be set off against the debtor's obligation without regard to the statute of limitations and may be raised as a defense at any time to any suit on the obligation.¹¹ In essence, then, there is no limitation on the time when these rights may be asserted to avoid payment on the obligation. This provision is necessary to protect the consumer who, unaware of his rights, fails to seek legal advice until he is sued by the creditor. Such a debtor, however, still has a right to receive attorneys' fees even though the statute has run.¹²

A. CONTRACT PROVISION VIOLATIONS¹³

A creditor may not take a negotiable instrument other than a check under the UCCC as evidence of the buyer or lessee's obligation in a consumer credit sale or consumer lease.¹⁴ For violating this provision a creditor may be held liable for civil damages.¹⁵ Similar liabilities attach to a creditor who violates the limitations on the schedule of payment or loan terms for "regulated loans."¹⁶ The debtor, under these circumstances, need not pay the credit service charge or the loan finance charge which he owes to the creditor. The debtor, in addition, may recover a penalty to be determined by the court, but not to exceed three

10. UCCC § 5.202(1), for example, allows one year to bring a suit after the due date of the last scheduled payment of the agreement involved.

11. UCCC § 5.205.

12. UCCC § 5.202(8) allows the court to award attorneys' fees "[i]n any case in which it is found that a creditor has violated this Act"

13. See Note, *Limitations on Creditors' Practices and Remedies Under the UCCC*, 55 MINN. L. REV. 544 (1971).

14. UCCC § 2.403. This section does not include sales or leases primarily for agricultural purposes.

15. UCCC § 5.202(1). A holder in due course without notice of the violation, however, is not subject to the penalties.

16. UCCC § 5.202(1) provides the same penalty for violations of UCCC § 3.511 which deals with the limitations on schedule payments and loan terms. A "regulated loan" is a consumer loan in which the rate of the loan finance charge exceeds ten percent per year calculated on the unpaid balances of the principal according to the actuarial method. UCCC § 3.591(1).

times the amount of the credit service charge or the loan finance charge.¹⁷ The statute of limitations bars any action one year after the last scheduled payment of the regulated loan agreement.¹⁸ If the creditor can prove by a preponderance of evidence that his violation of the provisions relating to regulated loans was unintentional or the result of a bona fide error, no liability results.¹⁹

At present, the only Minnesota law comparable to the above remedies for unfair consumer credit contract provisions concerning regulated loans is the unconscionable contract section of the Uniform Commercial Code.²⁰ Under this statute contract provisions must be so unfair as to affront ordinary standards of fairness and justice existing within the business credit community. If the debtor meets this section's difficult burden of proof, the court may (1) refuse to enforce the unconscionable part of the contract, (2) enforce the parts not unconscionable, or (3) revise the contract to make it fair. The successful debtor has no right to damages or reimbursement for attorneys' fees as he does under the UCCC. The Uniform Commercial Code's unconscionability section, however, covers a much wider scope of contract violations than just regulated loans. These loans are specifically regulated under the UCCC because they involve interest charges in excess of ten percent.²¹ The theory of the UCCC apparently is that creditors allowed to charge such rates should be held to a higher standard of responsibility for violating its terms.

Any unconscionable contract provisions outside the scope of the regulated loan sections discussed above would fall under the unconscionable contract section of the UCCC²² which is derived

17. UCCC § 5.202(1).

18. *Id.* This starting date for the running of the statute could allow as much as four years and one month in which to bring suit involving a regulated loan because a maximum contract period of 37 months is allowed.

19. UCCC § 5.202(7).

20. MINN. STAT. § 336.2-302 (1969):

Unconscionable Contract or Clause

(1) If the court as a matter of law finds the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

21. UCCC § 3.501(1).

22. UCCC § 5.108.

in large part from the Uniform Commercial Code and is almost identical to it. Thus, the combination of these two provisions relating to contract violations and the UCCC's unconscionable contract section would give more consumer credit protection in terms of available remedies than are presently provided by the Uniform Commercial Code's unconscionable contract section alone. The UCCC leaves out the word "commercial" before the phrase ". . . setting, purpose and effect . . ." in its version of the clause.²³ This section's comment states that the deletion concerning the evidence as to the contract's setting, purpose and effect was intentional. The reason for the deletion was that, "unlike the UCC, [the UCCC's section] is concerned only with transactions involving consumers, and the relevant standard of conduct for purposes of [the UCCC] is not that which might be acceptable as between knowledgeable merchants but rather that which measures acceptable conduct on the part of a businessman toward a consumer."²⁴ This position is supported by the fact that the UCCC version of the section adds the words, "[w]ith respect to a consumer credit sale, consumer lease, or consumer loan . . ." to the language of the Uniform Commercial Code.

This deletion, on the other hand, may have been unnecessary because a court could view the "commercial setting" as involving transactions between a businessman and a consumer because that is what the UCCC deals with. Although no Minnesota case has interpreted this term, one commentator on the Uniform Commercial Code's unconscionable clause stated, "[D]espite the language about commercial setting the application of this section is not limited to merchants."²⁵ Thus, while it appears that the UCCC's unconscionability clause is more limited in scope, its measure of acceptable conduct is more stringent. Minnesota law concerning contract provisions, for these reasons, would be changed by the adoption of the UCCC.

The UCCC also allows a private remedy for agreements involving extortionate extensions of credit²⁶ by providing that they are unenforceable.²⁷ This is a significant section because it is intended to facilitate federal prosecutions for making extortion-

23. UCCC § 5.108(2).

24. UCCC § 5.108, Comment 1.

25. Minish, *The Uniform Commercial Code in Minnesota: Articles 2 and 6—Sales and Bulk Transfers*, 50 MINN. L. REV. 103, 113 (1965).

26. That is, those where force is threatened at the time of the agreement. UCCC § 5.107.

27. UCCC § 5.107.

ate extensions of credit.²⁸ It should also be noted that this section's application is not limited to consumer credit transactions. Its importance is magnified in view of the fact that Minnesota repealed its extortion laws in 1963²⁹ and now depends upon federal action against extortion.

B. EXCESSIVE CHARGES

The UCCC provides the debtor with private civil remedies if excessive interest rates are charged by unscrupulous creditors. If a creditor violates the rate provisions of the Code, the debtor has a right to a refund of the excess charge.³⁰ He may also assert this remedy against an assignee who attempts to collect the debt directly or who tries to enforce rights arising under the debt. This remedy may be criticized because it gives the creditor insufficient incentive to adhere to the UCCC requirements. Successful assertion of the remedy only forces the creditor to give back that which he originally had no right to expect. Thus, he may gain an illegally excessive interest charge if undetected or unprosecuted, whereas he does not lose the allowable rate if he is successfully sued by the consumer.

The UCCC alleviates this problem by providing that if the creditor refuses to grant the refund within a reasonable time he is subject to a court imposed civil penalty.³¹ This penalty may be set by the court at an amount not exceeding the credit service charge or ten times the amount of the excess charge.³² This penalty will only have the desired effect of ensuring compliance if the amount imposed exceeds the credit service charge. At any lower penalty, the guilty creditor will not be forced to pay the penalty with cash out of his pocket. Instead, his only loss will be the credit service charge or the opportunity cost of not being able to invest his money profitably for the duration of the loan. The sections of the UCCC relating to remedies for excess charges are

28. One of the elements required by the FCCPA for a prosecution for extortionate extensions of credit is that "the repayment of the extension of credit . . . would be unenforceable, through civil judicial processes against the debtor . . . in the jurisdiction in which the debtor . . . resided . . ." 18 U.S.C. § 892(b) (1) (Supp. V, 1969).

29. MINN. STAT. § 621.14 (1969).

30. UCCC § 5.202(3).

31. UCCC § 5.202(4). The penalty is not to exceed "the greater of either the amount of the credit service or loan finance charge or ten times the amount of the excess charge." This penalty may not be imposed if the same creditor has paid a similar penalty assessed in a civil action brought by the Administrator under section 6.113.

32. UCCC § 5.202(4).

similar to those for the violation of contract provisions relating to regulated and supervised loans in that they provide that a good faith error on the part of the creditor will relieve him of liability and a successful debtor may recover his attorneys' fees.³³

Minnesota law provides a larger civil remedy for violation of its usury statute than the UCCC does for excess charges. The Minnesota usury statute allows the debtor to recover from the creditor the full amount of interest or premium paid³⁴ and further provides that all usurious contracts are void except as to bona fide purchasers of negotiable paper.³⁵ The declaration that usurious contracts are void gives a significant windfall to the debtor who can prove that a loan is usurious because "[the guilty party] must lose not only the interest on the money risked, but also the principal, including as well all security given to secure performance."³⁶ Although a greater recovery is allowed by this statute than under the UCCC, the usury statute in Minnesota has been restricted in its application as a result of the erosion by exception since its enactment.³⁷ The UCCC's excess charge provision, in comparison, concerns a more comprehensive variety of consumer credit transactions—any transaction involving a charge in excess of that allowed by the UCCC.³⁸ The UCCC also provides an additional penalty if the creditor fails to refund the excess promptly. Such a penalty is absent from the present Minnesota usury statute.³⁹ In conclusion, Minnesota law presently provides a larger remedy for excess charges than the UCCC. Nevertheless, the limited application of this larger reward restricts its significance as a consumer protection device.

C. DISCLOSURE VIOLATION REMEDIES

The debtor may rescind within three days of the transaction or of the delivery of the disclosures required by the UCCC any "consumer credit sale or consumer loan with respect to which a security interest is retained or acquired in an interest in land" to

33. UCCC § 5.202(7) & (8).

34. MINN. STAT. § 334.02 (1969). This does not really give the debtor much because the statute requires that one-half of the amount recovered be paid for the use of common schools in the county where it is collected.

35. MINN. STAT. § 334.03 (1969).

36. *Midland Loan Finance Co. v. Lorentz*, 209 Minn. 278, 287, 296 N.W. 911, 915 (1941).

37. See discussion in Note, *Rate Regulation Under the UCCC*, 55 MINN. L. REV. 525, 531-36 (1971).

38. UCCC § 5.202(3).

39. MINN. STAT. § 621.14 (1969).

be used as the buyer's home.⁴⁰ This section is derived directly from the FCCPA⁴¹ and is intended to meet the state law exemption provision of that Act. The only significant deviation from the Federal Act is the inclusion of any "consumer credit sale or consumer loan" instead of "consumer credit transaction" in the FCCPA. This difference could be interpreted to mean that the Federal Act has a wider scope than the UCCC.⁴² The better interpretation is that the scope is the same.⁴³

Violations of the UCCC's disclosure provisions on transactions other than those in regard to a sale of land to be used for a home discussed above and the provisions on advertising also carry substantial penalties.⁴⁴ These penalties are substantially similar to those set forth in the FCCPA⁴⁵ in an effort to meet that Act's exemption requirements.⁴⁶ Thus adoption of the UCCC in Minnesota would not change existing Minnesota law with respect to penalties for violation of disclosure requirements.

D. LICENSING VIOLATION REMEDIES

Violation of the licensing provisions of the UCCC invokes rather harsh penalties. A debtor who is given a supervised loan from an unlicensed supervised lender, *i.e.*, a lender who charges a loan finance charge in excess of 18 percent, but who is not authorized to charge such rates,⁴⁷ is not obligated to repay either

40. UCCC § 5.204(1).

41. 15 U.S.C. § 1635(a) (Supp. V, 1969). This section contains language which is substantially the same as UCCC § 5.204(1).

42. For example, UCCC section 2.106 defines a "Consumer Lease." Apparently this would not be covered under UCCC section 5.204(1), but would be included in the FCCPA's "consumer credit transaction."

43. See UCCC § 2.407 which says that a lessor cannot take a security interest in the property of the lessee to secure a debt arising from the lease. In addition, the UCCC provision must be at least as broad as the Federal Act to gain exemption. The UCCC's draftsmen were cognizant of this fact and thus it would not make sense to assume that they drafted a provision knowing that it would be inoperative.

44. These disclosure provisions are contained in Part 3 of Article 2—Credit Sales—and Article 3—Loans. Liability is a sum "twice the amount of the credit service or loan finance charge in connection with the transaction, but the liability pursuant to this paragraph shall not be less than \$100 or more than \$1,000 . . ." UCCC § 5.203(1) (a).

45. 15 U.S.C. § 1640 (Supp. V, 1969). This section is substantially similar to the UCCC provision imposing penalties for disclosure violations—UCCC § 5.203(1).

46. It is interesting to note that the UCCC provides substantially larger remedies in those provisions which closely follow the FCCPA than it does for those provisions which are not derived from the FCCPA.

47. UCCC § 3.501(3) & (4) and § 3.502.

the principal or the loan finance charge and the loan is void.⁴⁸ At first glance this rather severe penalty seems inconsistent with the UCCC's policy of not depending heavily on licensing provisions for enforcement, imposing only relatively lenient licensing requirements. The comments do not explain this apparent contradiction. A probable explanation is that since the UCCC only requires licensing of those lenders who may charge interest rates in excess of 18 percent, *i.e.*, supervised lenders,⁴⁹ the draftsmen may have felt that a person making loans without a license for such high rates must be dealt with severely. Another explanation may be that this minimal licensing is, nevertheless, important to the Administrator because it tells him which institutions engage in making supervised loans. If such institutions remain unlicensed, the administration of the UCCC will break down. Some temperance against the severity of this penalty exists in the provision which states that no liability may be imposed if the creditor proves by a preponderance of the evidence that the violation is unintentional or the result of a bona fide mistake.⁵⁰

Minnesota law does not mete out such severe civil remedies as does the UCCC for all failures to comply with the state's licensing requirements. Seven different types of lenders are required to be licensed in Minnesota⁵¹ and the civil remedies for violation are not uniform among them.

That uniformity is lacking is readily apparent from a look at the remedies provided for each of the institutions. A loan from an unlicensed small loan company is void under state law and the lender has no right to collect or receive any principal, interest or other charges whatsoever.⁵² This provision is almost identical to the remedy provided under the UCCC for unlicensed supervised lenders. The probable reason for this is that small loan companies may charge the highest rates allowable by any institution in Minnesota. Lenders engaged in sales financing of motor vehicle loans also face a liability similar to that provided

48. UCCC § 5.202(2).

49. UCCC § 3.502.

50. UCCC § 5.202(7).

51. They are (1) the small loan companies, MINN. STAT. ch. 56; (2) lenders engaged in sales financing of motor vehicle loans, MINN. STAT. §§ 168.66-.77; (3) industrial loan and thrift companies, MINN. STAT. ch. 53; (4) investment and loan companies, MINN. STAT. ch. 54; (6) credit unions, MINN. STAT. ch. 52, and (7) savings banks, MINN. STAT. ch. 50.

52. MINN. STAT. § 56.19 (1969).

in the UCCC for unlicensed supervised lenders. If the lender intentionally violates the licensing requirements, the buyer may assert his right to liquidated damages. The buyer may recover, set off or counterclaim in any action by the violator to enforce the contract, an amount as liquidated damages equal to the whole amount of the contract due and payable, plus reasonable attorneys' fees.⁵³ This remedy is slightly different than that allowed against unlicensed small loan companies and is difficult to explain or justify.

The inconsistency of Minnesota's remedies in this area is increased when it is noted that no civil remedies are available against unlicensed industrial loan and thrift companies,⁵⁴ investment and loan companies,⁵⁵ savings associations,⁵⁶ credit unions⁵⁷ and savings banks.⁵⁸ Although it may be possible to develop an explanation for the severe civil penalties imposed on small loan and motor vehicle finance companies vis-a-vis none for the other five types of consumer credit institutions in Minnesota with regard to violation of their licensing requirements, in the final analysis the correct conclusion seems to be that these statutes are indefensibly inconsistent. Unjustified inconsistencies of remedy for seemingly similar violations such as those discussed above for the seven institutions in Minnesota presumptively exemplifies one of the motives for drafting the UCCC. Yet, ironically, adoption of the UCCC will not completely solve the problem of diverse remedies for licensing requirement violations under Minnesota law. This results from the UCCC's provision that a supervised financial organization⁵⁹ need not obtain a license from the Administrator before engaging in the business of making supervised loans⁶⁰ because those organizations will continue to be regulated by the agencies presently regulating them.⁶¹ This is an important limitation on the Administrator's licensing powers and on the UCCC's appeal as a means of bringing logical consistency

53. MINN. STAT. § 168.75(b) (1969).

54. MINN. STAT. ch. 53 (1969).

55. MINN. STAT. ch. 54 (1969).

56. MINN. STAT. ch. 41A (1969).

57. MINN. STAT. ch. 52 (1969).

58. MINN. STAT. ch. 50 (1969).

59. See note 6 *supra* for the definition of a "supervised financial organization" under the UCCC.

60. UCCC § 3.502. "Unless a person is a supervised financial organization or has first obtained a license from the Administrator authorizing him to make supervised loans, he shall not engage in the business of (1) making supervised loans"

61. See note 6 *supra*.

and uniformity to Minnesota's licensing enforcement provisions. It is an inconsistency which would be remedied most easily by making the UCCC's licensing provisions applicable to all lenders. It would not change the number of licensed institutions because by definition all supervised financial organizations are already licensed.⁶² This remedy would, however, have the twofold advantage of providing uniform licensing requirements as well as uniform enforcement provisions to all supervised financial organizations and supervised lenders.

III. CRIMINAL REMEDIES

The UCCC provides criminal penalties for specified violations.⁶³ These criminal remedies may also be divided into the familiar categories of contract provision violations, excess charges, disclosure violations and licensing violations. By comparison, the UCCC imposes criminal penalties for a greater number of violations than Minnesota law, but the Code's penalties are not as severe as the few instances of criminal sanctions under state law.

A. CONTRACT PROVISION VIOLATIONS

Neither the UCCC nor Minnesota law imposes criminal penalties for violations of the contract provision requirements. The reason is apparently that violation of contract provision requirements can best be dealt with through civil remedies. As a result, enactment of the UCCC would not change existing state law in this area.

B. EXCESSIVE CHARGES

The UCCC provides that a supervised lender who willfully charges unlawfully high rates is guilty of a misdemeanor and may be fined in an amount to be determined by the individual states and/or sentenced to prison for a period not to exceed one year.⁶⁴ This penalty need only be applicable against supervised lenders charging excess rates because a person cannot make supervised loans unless he is a supervised financial organization or has obtained license to do so from the Administrator.⁶⁵ Thus,

62. *Id.*

63. See UCCC, Article 5, Part 3.

64. UCCC § 5.301(1). The house version of the bill in the 1969 Minnesota Legislature proposed the penalty to be a fine not exceeding \$100 and/or imprisonment for a period not to exceed 90 days. H.F. No. 430, J. of the House 10-102, Tuesday, May 13, 1969 (91st day).

65. UCCC § 3.502.

lenders other than supervised lenders which charge excessive rates would be subject to the sanctions set out in the UCCC for unlicensed supervised lenders⁶⁶ or to those of supervised lending organizations.⁶⁷ Minnesota does not presently impose any criminal penalty upon creditors for charging excessive finance fees. Such penalties are advisable, however, because they furnish a powerful enforcement device that can be used to deal with the persistent violator.

C. DISCLOSURE VIOLATIONS

The UCCC criminal sanctions for violation of its disclosure requirements are identical to those presently applicable to Minnesota lenders under the FCCPA.⁶⁸ These statutes impose a fine of up to \$5,000 and/or imprisonment up to one year for willful and knowing violation of these provisions. Again this penalty is more severe than most in the UCCC because its draftsmen were trying to parallel the Federal Statute.

D. LICENSING VIOLATIONS

Criminal sanctions may be imposed under the UCCC for willful failure to obtain a license to engage in supervised lending.⁶⁹ Such violations constitute a misdemeanor punishable by a fine to be determined by each state and/or imprisonment for up to one year.⁷⁰

Minnesota law in this regard does not presently exhibit any uniformity remotely approximating that found in the UCCC. First, only three of the seven types of licensed lenders may be criminally penalized for unlicensed operation. Violation of the Small Loan Company Act's licensing requirements is a gross misdemeanor.⁷¹ Violation of the Motor Vehicle Licensing Act's provisions is also a gross misdemeanor with punishment of a fine not exceeding \$500 and/or imprisonment not to exceed one year.⁷² Anyone operating as an investment and loan company without a license is guilty of a misdemeanor and upon conviction is subject to a fine of not less than \$100 nor more than \$1,000 and/or im-

66. UCCC § 5.202(2).

67. See note 6 *supra*.

68. UCCC § 5.302; 15 U.S.C. § 1611 (Supp. V., 1969).

69. UCCC § 5.301(2).

70. The house version of the UCCC in the 1969 Minnesota Legislature set the maximums at \$100 for the fine and 90 days imprisonment. H.F. No. 430, J. of the House 10-102, Tuesday, May 13, 1969 (91st day.)

71. MINN. STAT. § 56.19 (1969).

72. MINN. STAT. § 168.75(a) (1969).

prisonment of not less than three months nor more than one year.⁷³ No criminal penalties are imposed on unlicensed industrial loan and thrift companies, building and loan companies, credit unions or savings banks.⁷⁴ No logical explanation can be found for these variations.

As discussed previously,⁷⁵ adoption of the UCCC in its present form would not remedy these inconsistencies. All supervised financial organizations would continue to be governed by their present licensing provisions under the UCCC.⁷⁶ This is another reason the amendment to the UCCC suggested earlier should be implemented.⁷⁷

IV. ADMINISTRATION

The civil and criminal penalties discussed above are not meant to be the sole means of preventing violation of the UCCC's provisions. They are only meant to supplement⁷⁸ the activities of the administrative enforcement body which has the primary obligation to provide constant surveillance over consumer credit transactions. Private civil and criminal penalties alone are inadequate because the individual consumer may be too poor or too uninformed to assert them and a busy district attorney may find such white collar crime low on his list of priorities.⁷⁹ Additionally, these remedies tend in many instances to be rather harsh in comparison with the indiscretion committed. Although they are a necessary complement to a full arsenal of enforcement provisions, they are really meant to be a last resort to provide retribution after the fact when a consumer is harmed. The more important enforcement devices are those operating before a consumer is harmed which attempt to prevent violations rather than merely remedy them once a creditor has harmed an individual. This type of enforcement can be accomplished effectively only by an agency which has as its goal and purpose the protection of credit consumers.

A. BASIC ASSUMPTIONS

The UCCC's principal instrument for insuring compliance with its provisions is the Administrator whose powers, duties and

73. MINN. STAT. § 54.28 (1969).

74. See notes 54-58 *supra*.

75. See text accompanying notes 59-62 *supra*.

76. UCCC § 1.108(4) (b).

77. See text accompanying note 62 *supra*.

78. See text accompanying notes 7-9 *supra*.

79. See text accompanying note 13 *supra*.

functions are primarily enumerated in Article 6. It is recommended in the UCCC that the Administrator be a single official or agency, but this is not required if it is not constitutionally possible in a state.⁸⁰ This consolidation of powers is desirable because it will make communication with the public easier as well as allowing creditors to look to a single source for advice concerning compliance with the law.

The draftsmen chose to depend on an Administrator as the primary enforcing agent for several reasons. First, the placement of this responsibility in a single office will lead to a uniformity within the state which is impossible under the existing system.⁸¹ The present situation is accurately described by the

80. UCCC § 6.103. The house version of the UCCC bill before the 1969 Minnesota Legislature provided that the Commissioner of Banks would be the Administrator.

81. Enforcement under the FCCPA, for example, will be shared by at least nine agencies in the following manner:

[T]he Federal Reserve Board [will] be the central agency for formulating and issuing all substantive regulations on credit disclosure and advertising. Responsibility for enforcement . . . [is] given to the Federal Trade Commission, except as to those institutions already subject to the authority of federal supervisory agencies. Under this exception, the Federal Home Loan Bank Board will be responsible for the enforcement of those regulations affecting savings and loan institutions; the Comptroller of Currency for national banks, the Federal Reserve Board itself for state banks which are members of the Federal Reserve System; and the Federal Deposit Insurance Corporation for the federally-insured state non-member banks. The Director of the Bureau of Credit Unions will enforce requirements for federal credit unions. In addition, the Civil Aeronautics Board or the Federal Aviation Agency, the Interstate Commerce Commission and the Department of Agriculture will exercise jurisdiction over the institutions that they traditionally control.

Note, *Securing the Guarantees of Consumer Credit Legislation*, 44 NOTRE DAME LAW. 574, 599 (1969). For a discussion of the Federal Trade Commission's inadequacies as a regulatory agency in this area see *id.* at 599-601. See also 15 U.S.C. § 1607 (Supp. V, 1969) for the statutory basis of this division of powers.

Under the UCCC, the Administrator may exercise all powers given him by the Act even against "supervised financial organizations" except for the powers of examination, investigation and administrative enforcement. UCCC § 6.105(1). This exception removes a great deal of power over "supervised financial organization" from the Administrator, but the Administrator will still be able to exercise the following powers against those organizations: Advising consumers as to their rights (UCCC § 6.104(1)(b)), establishing programs to educate consumers (UCCC § 6.104(c)), making studies to effectuate the policies of the Act (UCCC § 6.104(d)), bringing civil actions for injunctions for violations of this Act (UCCC § 6.110), bringing civil actions for injunctions against unconscionable agreements and fraudulent or unconscionable conduct (UCCC § 6.111) and bringing civil actions for refund of excess charges (UCCC § 6.113).

statement that, "the variegated status of existing regulation is mirrored in the methods of enforcement authorized in the respective acts."⁸² Uniformity of consumer credit law within the state will make credit law more easily understandable to the average consumer and will thereby lead to better enforcement of the Code. Another justification for the use of an Administrator is the increased effectiveness that such an agency provides. In fact, "effective enforcement and, consequently, consumer protection have been provided only where there exists an aggressive consumer-oriented authority, as under the small loan statutes."⁸³ A final justification, closely akin to effectiveness, is the consistency of enforcement provided by a consumer oriented Administrator. Unlike the district attorney or the state attorney general, the UCCC Administrator's only task is to enforce the law relating to consumer credit transactions. His time, focus of interest and constituency are not as diverse and fragmented as the other aforementioned law enforcement agencies. The Administrator can uninterruptedly and consistently exert his power and influence against violators—unlike the district attorney or attorney general who is responsible for the enforcement of all other laws of the state as well as those related to consumer credit transactions.

The Administrator under the UCCC will take an entirely different approach toward consumer credit protection than the regulatory provisions allow under present Minnesota law. Minnesota presently depends upon licensing and inspection devices to assure compliance with existing credit laws. It gives an agency, usually the Commissioner of Banking, the power to grant and revoke licenses and to inspect the records of lending institutions. The Commissioner's primary weapon of enforcement is the threat of revocation. In some instances, such a threat can be relatively effective, but its primary fault is that it does not allow much leeway for informal administrative enforcement. The reason for this situation is that revocation of an established lending institution's license to operate is an extremely severe penalty. Thus, although revocation may be effective in instances where a creditor commits serious violations, it has little practical effect in situations where the abuse is small and both the creditor and the

82. Note, *supra* note 81, at 581. A good discussion of the disparity of regulation among the different lending institutions is found in Jordan & Warren, *The Uniform Consumer Credit Code*, 68 COLUM. L. REV. 387, 418 (1968).

83. Note, *supra* note 81, at 587.

Commissioner realize that revocation is not deserved.⁸⁴ It should be remembered, however, that violations which seem insignificant when compared with the revocation remedy can result in severe harm to the individual consumer who does not know of or cannot afford to pursue a civil recourse. This is the void the UCCC seeks to fill with the Administrator.

B. FUNCTIONS OF THE ADMINISTRATOR UNDER THE UCCC

1. *Jurisdiction*

The Administrator will have jurisdiction to assert his authority over all persons who, within the state, "make or solicit consumer credit sales, consumer leases, consumer loans, consumer related sales . . . and consumer related loans . . ." or persons who directly collect payment or enforce their rights against such debtors.⁸⁵ This grant of jurisdiction is intended to comprehend every consumer credit related transaction governed by the UCCC which occurs within the state and is an indication of the breadth of authority the draftsmen intended the Administrator to command.

2. *Information, Education and Counseling*

As part of the UCCC's intent to give the Administrator sufficient informal means to accomplish his task, it provides him with the power to counsel consumers on their respective rights and duties,⁸⁶ establish educational programs to enable consumers to protect themselves⁸⁷ and to make studies of possible improvements or additions to the UCCC.⁸⁸ This will provide a new source of consumer credit protection to Minnesota citizens because at present there is no state office with comparable powers. There are, of course, a number of offices and private groups which attempt to fulfill this function presently, but they are sorely inadequate. For example, the state attorney general's office publishes a weekly newsletter and records two tapes for distribution to the news media describing one or two consumer

84. The deterrent effect of revocation has not been the most productive use for licensing. Instead, licensing has been primarily used as a means of limiting entry into the credit industry. Jordan & Warren, *supra* note 82, at 419.

85. UCCC § 6.102.

86. UCCC § 6.104(1)(b).

87. UCCC § 6.104(1)(c).

88. UCCC § 6.104(1)(d).

frauds or fraudulent practices each week.⁸⁹ These do not always relate to consumer credit practices and often are not presented to the public by the news media. The Administrator would have the necessary informational resources and he would be a central figure to which people could look for comprehensive information concerning consumer credit matters.

3. Rule Making

The Administrator is required to adopt rules not inconsistent with the FCCPA to further the goal of that Act—to allow a prospective debtor to compare more readily the various credit terms available to him and to avoid the uninformed use of credit.⁹⁰ This is a significant section because it enables the Administrator to modify the law to meet current demands and to avoid the delay and the difficulty of amendment by legislative action. The flexibility implicit in this rule making authority is confined to the extent that any rules promulgated must be in harmony with the FCCPA if the state is to retain its exemption from federal regulation.⁹¹ The UCCC takes cognizance of this fact by requiring that the Administrator take into consideration when adopting, repealing or amending rules, the FCCPA and the regulations adopted by the Board of Governors of the Federal Reserve Board.⁹² To maintain uniformity among the states, the Administrator is also required to advise and consult with the Administrators in other jurisdictions which have enacted the UCCC.⁹³ Finally, the Code contains a good faith reliance clause

89. Interview with John Cushman, Assistant Minnesota Attorney General, in St. Paul, March 2, 1970.

90. The Administrator shall adopt rules not inconsistent with the Federal Consumer Credit Protection Act to assure a meaningful disclosure of credit terms so that a prospective debtor will be able to compare more readily the various credit terms available to him and to avoid the uninformed use of credit. These rules may require disclosure by persons who arrange for the extension of credit, may contain classifications, differentiations or other provisions, and may provide for adjustments and exceptions for any class of transactions subject to this Act which in the judgment of the Administrator are necessary or proper to effectuate the purposes or to prevent circumvention or evasion, or to facilitate compliance with, the provisions of this Act relating to disclosure of credit terms.

UCCC § 6.104(2).

91. "The Board shall by regulation exempt from the requirements of this part any class of credit transactions within any state if it determines that under the law of that state that class of transactions is subject to requirements substantially similar to those imposed under this part, and that there is adequate provision for enforcement." 15 U.S.C. § 1633 (Supp. V, 1969).

92. UCCC § 6.104(3).

93. UCCC § 6.104(3) (a) & (3) (b) (ii).

with regard to acts done or omitted pursuant to a rule of the Administrator if that rule is later amended, repealed or found to be invalid.⁹⁴ The only exception to this provision is that any excess charge made under the supposed authority of the invalid rule must be returned to the debtor.⁹⁵

4. *Licensing and Notification*

The UCCC does not use licensing as a regulatory device to the extent it is used under Minnesota state law. Minnesota law uses licensing primarily for four purposes: (1) the limitation of entry into the market place; (2) as a basis for providing information to the regulatory authorities; (3) as a transparent means of raising revenues to sustain administrative expenses, and (4) as a sanction for law violations through revocation of licenses.⁹⁶

Under the present regulatory statutes, entry into the market place is limited by certain findings required to be made by the Commissioner of Banks before a license may be issued.⁹⁷ Typical of this is the small loan company statute which provides that a license may be issued if the Commissioner finds among other things "that allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted"⁹⁸ The UCCC does not require the Administrator to make findings in regard to these factors and, thereby, in essence, allows free entry into the lending industry with the hope of creating greater competition within the credit industry.⁹⁹ The UCCC depends upon other means of enforcement to protect the consumer.

The provision allowing freedom of entry¹⁰⁰ has caused a

94. UCCC § 6.104.

95. *Id.*

96. "The licensing statutes of the various states serve at least one, if not all, of these functions." Note, *supra* note 81, at 581.

97. See savings banks, MINN. STAT. § 56.01; savings associations, MINN. STAT. § 61A.03; credit unions, MINN. STAT. § 52.01(4); industrial loan and thrift companies, MINN. STAT. § 53.03(2) (Department of Commerce makes the findings); investment and loan companies, MINN. STAT. § 54.29; small loan companies, MINN. STAT. § 56.04; motor vehicle retail installment sales lenders, MINN. STAT. § 168.67 and MINN. STAT. § 46.04 (1969).

98. MINN. STAT. § 56.04 (1969).

99. The UCCC only requires the Administrator to "make an evaluation of the financial responsibility, character and fitness of the applicant." UCCC § 3.503(1).

100. UCCC § 3.503. This provision allows relatively free entry because it adopts "financial responsibility, character and fitness" for supervised lending licenses rather than the "convenience and advantage"

great deal of controversy within the credit lending industry. The small loan companies dislike it because they see it as a threat to the semi-monopolistic positions which they now enjoy under Minnesota's licensing statutes. Retail businesses see it as an opportunity to get into the loan business. The theory of the UCCC is that free entry is a necessary corollary to its competitive rate structure.¹⁰¹ Opponents of this provision claim that it will not work in practice and their position is not without historical support. The first Uniform Small Loan Acts allowed freedom of entry in dependence upon competition to keep interest rates low. Later drafts, however, introduced "convenience and fitness of the community" as standards to be considered in granting licenses as well as providing for lower maximum rates.¹⁰² These changes were "a reflection of the conclusion . . . that competition within the small loan business was not fully effective."¹⁰³ It can be argued, on the other hand, that it is not fair to compare the small loan experiment with the UCCC because the latter involves the entire credit market, whereas the former did not. Consideration should also be given to the fact that the commercial setting is different today than it was forty years ago when the Uniform Small Loan Acts were drafted.

Minnesota law presently uses licensing statutes as information gathering devices.¹⁰⁴ A typical statute is the one concerning credit unions. It requires that "[e]ach credit union shall annually . . . file a report with the commissioner of banks . . . giving such relevant information as he may require concerning the operations during the preceding calendar year."¹⁰⁵ The UCCC contains a similar provision, except that it specifically says the information contained in the supervised lender's reports will be confidential and may only be published in composite form.¹⁰⁶

test which has often been used to restrict entry in the past. In addition, it does not require a license to make credit sales.

101. Note, *supra* note 81, at 586-87.

102. Hubachek, *The Development of the Regulatory Small Loan Laws*, 8 LAW AND CONTEMP. PROBS. 108, 119-23 (1941).

103. *Id.* at 122.

104. See savings banks, MINN. STAT. § 50.19; savings associations, MINN. STAT. § 51A.43; credit unions, MINN. STAT. § 52.06; industrial loan and thrift companies, MINN. STAT. § 53.09; investment and loan companies, MINN. STAT. § 54.27; small loan companies, MINN. STAT. § 56.04; motor vehicle retail installment sales lenders, MINN. STAT. § 168.70 and MINN. STAT. § 46.04 (1969).

105. MINN. STAT. § 52.06 (1969).

106. UCCC § 3.505(2). Supervised financial organizations, of course, will continue to file their annual reports after adoption of the UCCC to the agency that they file them with at present.

Receipt of information such as this is vital to the effective functioning of the Administrator. This information will allow the Administrator to make sound proposals for improvements in consumer credit laws as well as to enable him to make needed rules and regulations.

Licensing requirements are also used as a transparent means of raising revenues to sustain administrative activities.¹⁰⁷ This is particularly true of Minnesota's present statutes. The Small Loan statute, for example, requires a \$250 initial filing fee and a \$100 annual fee.¹⁰⁸ The UCCC does not require any filing fee or annual fee as a condition of maintaining a license. It does, however, require any person who engages in making consumer credit sales, consumer leases, or consumer loans and any person doing business in the state who takes assignments of and undertakes direct collection of payments from or enforcement of rights against debtors arising from those transactions¹⁰⁹ to pay a fee of \$10 per year with his notification to the Administrator that he is doing such business in the state.¹¹⁰ It also requires an annual payment of \$10 for each \$100,000 or part thereof, in excess of \$100,000, of the original unpaid balances arising from consumer credit transactions during a year.¹¹¹ These annual fees can obviously result in substantial amounts of revenue which can be used to help pay for the administrative costs of supervising the credit lending institutions.

Revocation of a lending institution's license is a potential sanction under both Minnesota law and the UCCC.¹¹² The Minnesota Small Loan Act allows revocation of the license for failure to pay the annual fee, failure to comply with the provisions of the statute or for the existence of conditions which would have been sufficient to deny the original application for a license.¹¹³ Credit unions may be placed in receivership and have their li-

107. See savings associations, MINN. STAT. § 41A.41; industrial loan and thrift companies, MINN. STAT. § 53.03; investment and loan companies, MINN. STAT. § 54.27; small loan companies, MINN. STAT. § 56.04; motor vehicle retail installment sales lenders, MINN. STAT. § 168.67 (1969).

108. MINN. STAT. § 56.02 (1969).

109. UCCC § 6.201.

110. UCCC § 6.203(1).

111. UCCC § 6.203(2) & (3).

112. See savings banks, MINN. STAT. § 50.22; savings associations, MINN. STAT. § 51A.05, subd. 5; credit unions, MINN. STAT. § 52.062; industrial loan and thrift companies, MINN. STAT. § 53.09 (3); small loan companies, MINN. STAT. § 56.09; motor vehicle retail sales lenders, MINN. STAT. § 168.68 (1969).

113. MINN. STAT. § 56.09 (1969).

censes revoked.¹¹⁴ Savings banks have a unique enforcement provision.¹¹⁵ The statute directs the Commissioner of Banks to initially give the violator a written order to discontinue the violation. If this order is not followed, the Commissioner makes a report and gives it to the attorney general to take appropriate action.

The UCCC's license revocation provisions appear quite lenient when compared with present Minnesota law. Under the UCCC the Administrator may issue an order to show cause why a supervised lender's license should not be revoked or suspended. This order is followed by a hearing with the maximum revocation period which may be imposed being six months.¹¹⁶ This period of revocation may, however, have the same consequences as absolute revocation provided under present Minnesota law. The loss of business and public faith resulting from even a short revocation may well make it impossible for a lender to recover. The apparent comparative leniency of the UCCC provision is a further indication of its emphasis on forms of enforcement devices other than licensing requirements as a means of policing the consumer credit industry.

5. *Investigatory Powers*

A necessary power of any effective enforcement agency is that of investigation because it gives the agency information upon which to base its enforcement strategies and also indicates where its enforcement is most urgently needed. The UCCC gives the Administrator power to investigate, hold hearings, subpoena witnesses and compel production of records. This power of investigation is to be exercised in cooperation with enforcement agencies and officials presently supervising lending institutions chartered under the laws of the state or of the United States.¹¹⁷ The Administrator may, however, exercise this power of investigation only if he has probable cause to believe that a person has engaged in an act which is subject to action by the Administrator.¹¹⁸

It is questionable whether the Administrator should be limited to making investigations only when he has probable cause to do so.¹¹⁹ One point is clear, however: This provision will not

114. MINN. STAT. § 52.064 (1969).

115. MINN. STAT. § 50.22 (1969).

116. UCCC § 3.504(1).

117. UCCC § 6.105(1), (2) & (3).

118. UCCC § 6.106.

119. Section 6.106 is not intended to give the Administrator a gen-

provide the Administrator with as much power as the Commissioner of Banks presently may exert. Under present Minnesota statutes the Commissioner is directed to exercise "constant supervision over the books and affairs of financial corporations doing business in the state."¹²⁰ The present Minnesota Small Loan Act allows the Commissioner to investigate whenever he desires.¹²¹ He is given similar powers under the Savings Association Act,¹²² the Credit Union Act¹²³ and the Savings Bank Act.¹²⁴ Thus, these institutions are subject to more investigation under present state law than supervised lenders would be under the UCCC. On the other hand, the Industrial Loan and Thrift Company Act only requires an annual examination.¹²⁵ The motor vehicle statute is similar to the UCCC in that it allows the Commissioner of Banks to investigate a lending institution following the filing of a complaint.¹²⁶ No logical reason can be discerned for these various types of investigatory powers under present Minnesota law. They seem to be more indicative of the vagaries of haphazard legislation than of any well designed system of regulation.

6. Enforcement Powers

The backbone of the Administrator's powers is the enforcement devices given to him in the UCCC. The UCCC gives the Administrator sufficient power in this area to deal effectively with the most recalcitrant offender. The first of these powers is the ability to issue an order to cease and desist from engaging

eral power to investigate in a dragnet manner as is indicated by the requirement of probable cause. This intent of the draftsmen to so limit investigations may be circumvented by section 3.506 which allows the Administrator to

[e]xamine periodically at intervals he deems appropriate the loans, business, and records of every licensee. In addition, for the purpose of discovering violations of this Act or securing information lawfully required, the Administrator or the official or agency to whose supervision the organization is subject . . . may at any time investigate the loans, business, and records of any regulated lender.

The fact that it is limited to regulated lenders may mean that the draftsmen felt that some restraint in the form of a probable cause requirement was needed for investigations of nonregulated lenders but left regulated lenders to the discretion of the Administrator.

120. MINN. STAT. § 46.04 (1969).

121. MINN. STAT. § 56.10 (1969).

122. MINN. STAT. § 51A.42(3) (1969).

123. MINN. STAT. § 52.06 (1969).

124. MINN. STAT. § 50.19 (1969). The trustees of the bank are required to file an annual report containing the information required by the Commissioner of Banks.

125. MINN. STAT. § 53.09 (1969).

126. MINN. STAT. § 169.69 (1969).

in violations of the Code.¹²⁷ This order is to be issued following notice and hearing and becomes enforceable when a judicial enforcement order is secured by the Administrator, unless a proceeding for review is initiated within 30 days after the order is issued.¹²⁸

The Administrator may also choose to proceed against a violator by the use of a civil injunction.¹²⁹ The UCCC also contains an additional section specifically concerning injunctions against unconscionable agreements and fraudulent or unconscionable conduct.¹³⁰ The Code specifies three situations in which the Administrator may seek an injunction against unconscionable conduct: (1) making or enforcing unconscionable contract terms or provisions,¹³¹ (2) fraudulent or unconscionable inducement to enter into a consumer credit transaction,¹³² and (3) fraudulent or unconscionable collection of such debts.¹³³ The unconscionable section further delineates five factors to be considered in its application. The fact that the creditor does not believe there is a reasonable probability of full payment at the time of the giving of credit indicates that the credit sale is unconscionable.¹³⁴ The same result occurs where the seller knows the buyer cannot receive substantial benefits from the property or services sold.¹³⁵ Similarly, the seller's charging prices grossly different than those readily obtainable by like buyers or lessees indicates unconscionable behavior.¹³⁶ Separate charges for insurance are also to be considered.¹³⁷ Finally, the UCCC permits consideration to be taken of the fact that the debtor cannot protect his interests because of physical or mental infirmities, illiteracy, inability to understand the language of the agreement and other factors.¹³⁸

127. UCCC § 6.108(1).

128. UCCC § 6.108(5).

129. UCCC § 6.110.

130. UCCC §§ 6.111 & 6.108(6).

131. UCCC § 6.111(1)(a).

132. UCCC § 6.111(1)(b).

133. UCCC § 6.111(1)(c).

134. UCCC § 6.111(3)(a).

135. UCCC § 6.111(3)(b). UCCC § 6.111, Comment, Note 3, uses the example of selling English encyclopedias to Spanish speaking people. Thus it could be argued that the "substantial benefits" requirement would not apply to the familiar built-in home vacuum cleaner, the home fire alarm system or the sale of lifetime encyclopedia yearbook contracts to elderly people. The Code, on the other hand, does not rule out these possibilities. Thus, this section could have tremendous potential as a consumer protection device.

136. UCCC § 6.111(3)(c).

137. UCCC § 6.111(3)(d).

138. UCCC § 6.111(3)(e). The inability to understand the language

These factors exemplify the UCCC's intent to provide flexible enforcement devices as well as attempting to control the whole consumer credit transactional setting rather than just the contract provisions.

Probably the most innovative, significant and potentially effective enforcement power given to the Administrator is the power to bring civil actions against creditors on behalf of the overcharged debtor for making or charging excess rates.¹³⁹ These actions may be for civil penalties as well as for the refund of the excess charges. Many debtors who would not otherwise be able to receive relief because of financial or other reasons¹⁴⁰ will be greatly benefited by this provision. In essence, it means that no harmed debtor will be unable to get relief.

This section, in addition, contains the intriguing sentence that, "an action may relate to transactions with more than one debtor."¹⁴¹ Some writers have not read this sentence as allowing the Administrator to bring class actions.¹⁴² Other writers including Professor Robert Braucher, a member of the UCCC's drafting committee, have expressed a different opinion. His belief is that "a state administrator is given power . . . to bring class actions on behalf of consumers."¹⁴³ Class action litigation would allow the Administrator to bring actions for civil damages in amounts of sufficient magnitude to make them economically efficient as well as having a significant deterrent effect upon potentially unscrupulous lenders.

V. CONCLUSION

The UCCC provides a variety of devices for the protection of the consumer credit borrower which are flexible and uniform to cover violations in a large number of consumer credit transactions. Yet, as has been indicated at several points in this

of the agreement could significantly impede the insertion of boilerplate clauses.

139. UCCC § 6.113(1).

140. For the relatively unsophisticated consumer, particularly those of modest means, administrative enforcement will provide their only protection against unscrupulous merchants or lenders. Such consumers neither will have the means for instituting their own suits, nor adequate knowledge or experience to enable them to file a complaint through proper channels to obtain redress through the Attorney General in a criminal action. H.R. Rep. No. 1040, 90th Cong., 1st Sess. 18 (1967).

141. UCCC § 6.113.

142. See Dunham, *Unconscionable Conduct and the Uniform Commercial Code*, 23 J. FIN. 312, 316 (1968).

143. Braucher, *Truth in Lending and Truth in Legislation*, 37 HENN. LAW. 4 (1969).

Note, the UCCC has one weakness which would restrict significantly the impact that passage of this uniform statute would have upon present Minnesota law. That weakness is the division set up between supervised financial organizations, which would continue to be governed to a great extent by present law, and supervised lenders, who would be governed primarily by the Administrator. This would result in a continuance of the present diverse regulation of consumer credit lenders. Since the Commissioner of Banks, who is presently primarily responsible for enforcement of Minnesota's laws regulating lenders, would be the Administrator under the UCCC, uniform rules for all lenders in the areas of licensing requirements and penalties, examination, investigation and administrative enforcement would be possible if the Commissioner were allowed to exert the powers provided in these areas under the UCCC against supervised financial organizations as well as supervised lenders. Acceptance of this modification would make the UCCC truly uniform in its application as well as placing substantially all of the Act's enforcement responsibility upon the Administrator. Then, the Administrator would be able to independently assert all of the various enforcement devices provided by the UCCC against *all* violators in order to arrest effectively violative activities and fairly and adequately compensate the harmed debtor.

