

Summer 1970

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Recommended Citation

Stephen K. Taylor, *Missouri and Federal Credit Disclosures--Coexistence*, 35 MO. L. REV. (1970)
Available at: <http://scholarship.law.missouri.edu/mlr/vol35/iss3/6>

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MISSOURI AND FEDERAL CREDIT DISCLOSURES— COEXISTENCE

In recent months the nation has focused its attention to an unprecedented degree upon the individual consumer. The Presidential assistant, the legislative draftsman, the administrative task force, and the self-appointed champion have each assaulted those elements in the community which would seek unreasonable profits at the expense of a deceived and defenseless consumer. While it has never flown so high, the banner of the consumer has been raised before and many states have legislation which is in some manner designed to protect him.¹ In Missouri the usury statutes,² along with the Retail Credit Sales Act,³ the Motor Vehicle Time Sales Act,⁴ and the small loan statutes⁵ are the consumers' chief protection. Nevertheless, prompted by abuses prevalent in the small loan business and in retail installment financing,⁶ Congress enacted the Consumer Credit Protection Act of 1968. Title I of that act has been popularly styled as the "Truth in Lending" Act.⁷ It is this title which shall be the primary concern of this comment.

The Truth in Lending Act, which became effective on July 1, 1969,⁸ regulates credit transactions which are to some extent the subject of existing state and local regulations. This local legislation is anything but uniform, and the hodgepodge of existing state law varies greatly in scope and intensity.⁹ The federal law provides that a creditor shall not be required to comply with any state law requirements which are *inconsistent* with the demands of the federal statute.¹⁰ The proposition has been asserted, however, that to the extent state laws are consistent with the federal rules (*i.e.* contain substantive provisions which are different from, but do not contradict, the federal law), a creditor must comply not only with the appropriate federal laws and administrative regulations, but also with the applicable state statutory requirements.¹¹ It is the interaction of these two statutory schemes and the consequences of their simultaneous application that motivates this discussion.

1. See *e.g.*, ILL. REV. STAT. ch. 121½, § 223-53 (1959); IOWA CODE ANN. §§ 322.1-26 (1966); KAN. SPEC. SESS. 1958, ch. 9, §§ 1-15; KY. REV. STAT. §§ 190.010-.990 (1959); NEB. LAWS 1959, chs. 215-16, ch. 217, §§ 1-3, ch. 218, §§ 1-13.

2. §§ 408.020-.070, RSMo 1967 Supp.

3. §§ 408.250-.370, RSMo 1967 Supp.

4. §§ 365.010-.160, RSMo 1967 Supp.

5. §§ 408.100-.200, RSMo 1967 Supp.

6. See REPORT ON CONSUMER CREDIT PROTECTION ACT OF THE HOUSE COMM. ON BANKING AND CURRENCY, H. R. REP. No. 1040, 90th Cong., 1st Sess. 13 (1967).

7. Consumer Credit Protection Act, 15 U.S.C. §§ 1601-65 (1968). Section 101 of Pub. L. 90-321 (May 29, 1968) provided that: "This title [enacting subchapter I of the Consumer Credit Protection Act] may be cited as the Truth in Lending Act." For the legislative history and purpose of Pub. L. 90-321, see 1968 U.S. CODE CONG. AND ADM. NEWS 1962.

8. Act of May 29, 1968, Pub. L. No. 90-321, § 504 (b).

9. PREFATORY NOTE TO FINAL DRAFT, UNIFORM CONSUMER CREDIT CODE.

10. 15 U.S.C. § 1610 (a) (1968).

11. 29 OP. ATT'Y. GEN. 271 (1969), given in response to an inquiry by the Commissioner of Finance, Missouri Department of Business and Administration.

I. DISCLOSURE UNDER THE FEDERAL LAW

A complete survey of Title I of the Consumer Credit Protection Act and Regulation Z,¹² its primary implementing regulation, will not be attempted; however, a brief synopsis of their primary operative provisions is essential. Since Congress delegated to the Board of Governors of the Federal Reserve System the task of implementing the Act,¹³ it is only through studying Regulation Z in conjunction with the Act that a complete understanding of the entire legislative program can be found.

The purpose of the Truth in Lending Act is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit."¹⁴ The thrust of the Act lies in a uniform and understandable disclosure of the essential terms of a credit transaction. Disclosure is required at all relevant stages of the credit transaction¹⁵—in advertising,¹⁶ at a specified time before the obligation is incurred,¹⁷ and at every billing.¹⁸ The Act, intended for the protection of the individual consumer, contains a number of exceptions which have the effect of excluding business-oriented transactions. Extensions of credit for business or commercial purposes;¹⁹ extensions of credit to organizations, corporations, and governmental agencies;²⁰ transactions in securities or commodities accounts;²¹ extensions of credit in excess of \$25,000²² (with certain real estate exceptions) are all specifically exempted. Thus, in general, the Act applies to any individual or organization which, in the ordinary course of business, regularly extends credit to individual consumers for personal, family, or household uses,²³ provided any finance charge is or may be payable for that credit.

The key information which the Truth in Lending Act and Regulation Z require to be disclosed is the finance charge and the annual percentage rate. Computation procedures and methods for disclosure are prescribed in the Act and in the Regulation.²⁴ Through these disclosures the customer hopefully will be able to compare readily, in terms of actual and relative costs, the alternative credit arrangements made by different retailers and dealers in credit.

12. Federal Reserve Board Regulation Z [Hereinafter cited as "Reg. Z"], 12 C.F.R. § 226 (1969).

13. 15 U.S.C. § 1604 (1968).

14. 15 U.S.C. § 1601 (1968); Reg. Z, 12 C.F.R. § 226.1 (a) (2) (1969).

15. Kintner, Henneberger & Neill, *A Primer on Truth in Lending*, 13 St. L. U.L.J. 501 (1969).

16. 15 U.S.C. §§ 1661-65 (1968). Reg. Z, 12 C.F.R. § 226.10 (1969).

17. 15 U.S.C. §§ 1637 (a), 1638 (b), 1639 (b) (1968).

18. 15 U.S.C. § 1636 (1968).

19. 15 U.S.C. § 1603 (1) (1968).

20. *Id.*

21. 15 U.S.C. § 1603 (2) (1968).

22. 15 U.S.C. § 1603 (3) (1968).

23. Agricultural purposes are not included in the category of "business or commercial purposes," hence, the individual who uses credit for agricultural purposes is protected by the Act. 15 U.S.C. § 1602 (h) (1968). For the definition of "agricultural purpose" see Reg. Z, 12 C.F.R. § 226.2 (c) (1969).

24. 15 U.S.C. §§ 1605, 1606 (1968); Reg. Z, 12 C.F.R. §§ 226.4 (a), 226.5 (a) (1969).

A. The Finance Charge

Regulation Z defines "finance charge" as "the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit. . . ."²⁵ This definition includes the total of all costs expressed in dollars and cents that the customer is required to pay to obtain credit. The finance charge is not limited to interest but includes transaction charges, carrying charges, service charges, time price differentials, loan fees, finder's fees, investigation or credit report fees, and any amounts payable as a discount.²⁶

Certain insurance premiums may also be included in the finance charge if such insurance is required by the creditor as an incident to the transaction.²⁷ On the other hand, insurance premiums need not be included in the finance charge provided that: (1) the insurance is not required by the seller as an incident to the extension of credit; (2) this fact is conspicuously disclosed to the customer in writing; and (3) the customer signs a separate affirmative indication of his desire to purchase such insurance from the creditor.²⁸ Insurance against loss or damage to the property need not be disclosed in the finance charge, even though required by the creditor, if the customer is notified conspicuously in writing that he may obtain the necessary insurance from another source.²⁹ However, default or credit loss insurance premiums must always be included.³⁰

Several charges, if properly itemized and disclosed to the customer, need not be included in the finance charge. They include: taxes, license fees, registration fees, legal fees, and fees prescribed by law as payable to public officials.³¹ The means of computing amounts due for default, delinquency, or late payment must be disclosed, but such costs are not included in the finance charge.³²

B. The Annual Percentage Rate

The other important disclosure required by the Act is the "annual percentage rate." Disclosed in terms accurate to the nearest quarter of one percent,³³ the annual percentage rate is not simply interest.³⁴ Rather, the annual percentage rate is basically the ratio of the finance charge which is applicable to the unpaid balance. Thus, the annual percentage rate discloses in terms of "percent," and in a uniform manner to promote com-

25. Reg. Z, 12 C.F.R. § 226.4 (1969).

26. 15 U.S.C. § 1605 (a) (1968); Reg. Z, 12 C.F.R. § 226.4 (a) (1969).

27. 15 U.S.C. § 1605 (b) (1968); Reg. Z, 12 C.F.R. § 226.4 (a) (5) (1969).

28. *Id.*

29. 15 U.S.C. § 1605 (c) (1968); Reg. Z, 12 C.F.R. § 226.4 (a) (6) (1969).

30. Reg. Z, 12 C.F.R. § 226.4 (a) (7) (1969).

31. 15 U.S.C. § 1605 (e) (1968); Reg. Z, 12 C.F.R. § 226.4 (e) (1969).

32. Reg. Z, 12 C.F.R. § 226.4 (c), (d) (1969).

33. 15 U.S.C. § 1606 (c) (1968); Reg. Z, 12 C.F.R. § 226.5 (a) (1969).

34. Federal Reserve Board Governor James L. Robertson has described the annual percentage rate as "merely the common sense cost of money over the life of the loan. . . ." Robertson, *Granting Consumer Credit Under Regulation Z*, 57 THE CREDIT WORLD 9, 11 (1968).

parison, the same information that the finance charge discloses in terms of dollars and cents—namely the actual cost of the credit extension. The prescribed method of computation³⁵ is expressed in rate tables published by the Federal Reserve Board in order to reduce the complex computations necessary to accommodate the variety of credit plans now available.³⁶

C. Credit Transactions

The Truth in Lending Act separates credit transactions into three categories: open end credit sales, credit sales other than open end, and consumer loans.³⁷ To make credit comparisons possible the disclosures must be made before the customer becomes obligated on the credit contract.³⁸ In the revolving charge situation, which exemplifies the open end credit sale, the customer typically pays a service charge based on the remaining unpaid balance in the account.³⁹ No contractual credit obligation is incurred when the account is opened, but since Congress considered the task of making a detailed disclosure each time a specific item was charged to the account too burdensome, the Act requires complete disclosure of the credit terms at the time the account is opened.⁴⁰

Credit sales other than open end generally include the installment purchase of such items as an automobile or major appliance. Once again disclosure must be made to the customer before he becomes obligated on the transaction. Several required disclosures⁴¹ must be made together, and may

35. 15 U.S.C. § 1606 (1968).

36. These tables are available at any Federal Reserve Bank or from the Federal Reserve Board in Washington, D.C., 20551, upon written request and payment of a nominal charge.

37. 15 U.S.C. §§ 1637-39 (1968).

38. Kintner, Henneberger & Neill, *A Primer on Truth in Lending*, 13 St. L. U.L.J. 501, 516 (1969).

39. 15 U.S.C. § 1602 (i) (1968).

40. For a detailed description of the disclosures required under an open end consumer credit plan see 15 U.S.C. § 1637 (1968); Reg. Z, 12 C.F.R. § 226.7 (a) (1969).

41. In credit sales other than open end, the following disclosures must be made:

- (1) the cash price, using the term "cash price;"
- (2) the "total down payment," using that term, itemized as "cash down payment" and "trade-in," using those terms;
- (3) the difference between the cash price and the down payment, using the term "unpaid balance of cash price;"
- (4) all other charges, individually itemized, included in the amount financed, but not a part of the finance charge;
- (5) the sum of all these itemized charges plus the "unpaid balance of cash price," describing the sum as the "unpaid balance;"
- (6) any amounts deducted as a "prepaid finance charge;"
- (7) the difference between the "unpaid balance" and the "prepaid finance charge," using the term "amount financed;"
- (8) total dollar amount of the "finance charge" using that term;
- (9) the sum of the "cash price," all other itemized charges not included in the finance charge, and the "finance charge," referring to this sum as the "deferred payment price;"
- (10) the date when the finance charge begins to apply;
- (11) the "annual percentage rate" using those terms;

appear either on the face of the note or other evidence of indebtedness or on one side of a separate statement.⁴² The customer must receive a duplicate of the evidence of indebtedness or a separate statement which identifies the transaction and the creditor.⁴³

Consumer loans are distinguished from credit sales in that the latter situation is characterized by a seller who either furnishes or arranges for the credit, while the consumer loan is extended by someone other than the seller. Consumer loan disclosures are generally not as extensive as in the case of a credit sale transaction primarily because the complications of a trade-in allowance or down payment found in credit sales are not present and because the creditor finds it more difficult to conceal charges.⁴⁴ Again, the disclosures must be made before the transaction is consummated, and must appear on the face of the note, on other evidence of indebtedness or on a separate statement identifying the creditor and the transaction.⁴⁵

The Truth in Lending Act and Regulation Z do not attempt in any manner to regulate the cost of credit. Directed entirely toward disclosure, the federal legislation attempts to implement a uniform system of credit language and technique designed to reduce the confusion in the public mind about the true costs of credit.⁴⁶

II. REGULATION OF MISSOURI CREDIT

In contrast to the federal legislation, the typical provisions of the lending and credit statutes of the various states are not primarily directed toward disclosure.⁴⁷ Rather, the most important provisions of the state statutes relate to allowable or maximum rates that creditors may charge for the extension. Notions of usury have been the dominant motivation for their enactment.⁴⁸ This is not to say, however, that state legislation does not

(12) the number, amount and due dates of payment;

(13) the "total of payments," using that term;

(14) the amount, or method of computing the amount, of any default or delinquency charges;

(15) a description of the security held, retained, or acquired by the creditor;

(16) a description of any penalty charge that may be imposed for prepayment of principal; and

(17) the identification of the method of computing any unearned portion of the finance charge in the event of prepayment.

15 U.S.C. § 1638 (a) (1968); Reg. Z, 12 C.F.R. § 226.8 (b), (c) (1969). See also Kintner, Henneberger & Neill, *supra* note 15.

42. 15 U.S.C. § 1638 (b) (1968); Reg. Z, 12 C.F.R. § 226.8 (a) (1969).

43. *Id.*

44. Kintner, Henneberger & Neill, *supra* note 15, at 522.

45. 15 U.S.C. § 1638 (b) (1968); Reg. Z, 12 C.F.R. § 226.8 (a) (1969).

46. A recent survey asked 800 families to estimate the rate of finance charge they were paying on their consumer debts. The average estimate was approximately eight percent, although the actual average rate paid was almost twenty-four percent or nearly three times higher. See REPORT ON CONSUMER CREDIT PROTECTION ACT OF THE HOUSE COMM. ON BANKING AND CURRENCY, H.R. REP. NO. 1040, 90th Cong., 1st Sess. 13 (1967).

47. Anderson, *Retail Installment Sales and Revolving Credit Acts: Missouri Constitution Article III, Section 44*, 25 Mo. L. REV. 239 (1960).

48. *Id.* at 242.

contain at least some elements of disclosure. A certain amount of disclosure will be a natural by-product of the statutes' regulatory function; for example, a statute which regulates the amount of interest which a creditor may charge will very often cause the rate of interest to be revealed.

This tendency can be seen in the Missouri small loan laws which regulate essentially usurious transactions, since they deal primarily with credit charges on loans which are too small to be covered under the general law of usury. The yield on a small loan may not exceed 2.218 percent per month on the first five hundred dollars of the unpaid principal balance.⁴⁹ Incident to this regulation of credit charges, the Missouri statute requires disclosure of the principal amount of the loan excluding interest and the rate or amount of interest for which the contract provides.⁵⁰ While state retail credit sales laws are more recent and reflect a greater emphasis on disclosure, they nevertheless regulate the maximum credit charges on retail installment contracts and retail charge agreements. The time charge collectible on a retail time contract may not exceed twelve dollars per year on a principal balance that does not exceed three hundred dollars.⁵¹ The Act also provides for disclosure of the principal balance and the time charge applicable to the agreement.⁵²

A. *Missouri Retail Credit Sales Act*

Missouri's Retail Credit Sales Act applies to transactions between a "retail buyer" and a "retail seller."⁵³ Either of the parties may be an individual, partnership, corporation, or association.⁵⁴ The subject matter of the transaction is limited to "goods," the value of which does not exceed seventy-five hundred dollars. Specifically excepted from the definitions are motor vehicles and choses in action.⁵⁵ The statute applies to "retail time transactions" only, which encompasses contracts to sell, or the sale of goods for which payment is to be made in one or more installments. The statute requires that each retail time contract be signed by both the buyer and seller, and that the contract be completed prior to signing. The statute also prescribes the contents of the retail time contract; but the statute does not require a uniform method for describing the disclosed items.⁵⁶ The Retail Credit Sales Act includes provisions relating to retail charge agreements.⁵⁷ The initial agreement must be delivered to the buyer before the first payment is due thereunder, and it must disclose the maximum time charge payable. The statute also requires periodic disclosure of the unpaid balance and the credit charges due.

The Missouri Retail Credit Sales Act also establishes maximum time charges that may be collected on retail time contracts and on retail charge

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- 49. §§ 408.250-.370, RSMo 1967 Supp.
 - 50. §§ 408.100-.200, RSMo 1967 Supp.
 - 51. §§ 365.010-.160, RSMo 1967 Supp.
 - 52. §§ 365.120, 408.100, .300, RSMo 1967 Supp.
 - 53. § 408.250 (4), (5), RSMo 1967 Supp.
 - 54. § 408.250 (15), RSMo 1967 Supp.
 - 55. § 408.250 (1), RSMo 1967 Supp.
 - 56. § 408.260, RSMo 1967 Supp.
 - 57. § 408.290, RSMo 1967 Supp.

agreements. The statute imposes these ceilings "notwithstanding the provisions of any other law." Considering that the "time charge" is in "lieu of any interest charge,"⁵⁸ the ordinary laws on usury have no application to retail credit. The time charge as computed is based upon the "principal balance" under a retail credit contract and the "unpaid balance" under a retail charge agreement.

B. Motor Vehicle Sales and Small Loans

The Motor Vehicle Time Sales Act and the small loan statutes are similar to the Retail Credit Sales Act in that after requiring certain minimum disclosures, they regulate the charges imposed for the extension of credit.⁵⁹ The small loan laws⁶⁰ apply only to the first five hundred dollars of the loan and do not include loans made to corporations. The Motor Vehicle Time Sales Act also contains a licensing requirement for the regulation of those engaged in the business of purchasing retail installment contracts for motor vehicles.⁶¹

III. THE FEDERAL LAW IN MISSOURI

The Truth in Lending Act does not purport to alter or affect the meaning of state statutes relating to the amounts, rates, charges, or elements of charges, in connection with the use or extension of credit.⁶² In a like manner the Act does

not . . . exempt any creditor from complying with the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that those laws are inconsistent with the provisions of this Act . . . and only then to the extent of the inconsistency.⁶³

A Missouri creditor therefore must comply with all state laws which are not "inconsistent" with the federal act.

The term inconsistent, however, standing alone, provides little guidance and necessarily raises numerous problems. Is the state requirement that the retail charge agreement be delivered to the customer before the due date of the first payment inconsistent with the federal provision requiring full disclosure before the initial open end credit is extended? Are the two requirements contradictory and unable to stand together, or are they merely different, not inconsistent, so that although disclosures are made before the initial transaction is consummated, nevertheless, the creditor must also deliver a copy of the agreement? The perplexing situa-

58. § 408.300, RSMo 1967 Supp.

59. §§ 365.120, 408.100, RSMo 1967 Supp.

60. For a discussion of the history of small loan legislation in Missouri, see Gisler, *Legal and Historical Background of Missouri Small Loan Problem*, 16 Mo. L. Rev. 207 (1951).

61. § 365.030, RSMo 1967 Supp. There are similar licensing requirements for those who purchase retail time contracts and accounts. §§ 364.010-070, RSMo 1967 Supp.

62. 15 U.S.C. § 1610(b) (1968).

63. *Id.* 1610(a).

tion of statutory construction in which the creditor finds himself is not easily solved.⁶⁴

In several instances the disclosures required by the federal law and by the Missouri statutes are quite similar. For example, the federal law requires disclosure of the "deferred payment price,"⁶⁵ and under the Missouri laws the term "time sale price"⁶⁶ reveals identical information. Because of this similarity and because use of the federal nomenclature is made mandatory by statute while that of Missouri is not, a disclosure of the "deferred payment price" will satisfy both the federal and the state statutory requirements. A similar dual purpose will be served by the federal term "total of payments" which will suffice to duplicate the disclosure of the "time balance" under Missouri law. Therefore, compliance with these state requirements is not "inconsistent" with the federal law.

A. Interpretation of "Inconsistent"

A recent opinion issued by the Missouri Attorney General speaks directly to this problem. Its analysis may demonstrate the manner in which the federal and state laws in this area coexist in the same jurisdiction.⁶⁷ The opinion was given in response to an inquiry which sought an interpretation of the term "inconsistent" as it is used in the federal statute. Specifically, the opinion compared the language found in the federal and state laws and ruled that certain disclosures found in the Missouri law were not consistent with the federal law. (Since the opinion compared only those terms which the inquiry requested, its contributions are necessarily limited; however, the rationale found in the opinion will illustrate the difficulties currently facing the Missouri creditor.)

According to the opinion the federal term "unpaid balance"⁶⁸ and the disclosure of the items contemplated by the Missouri phrase "principal balance"⁶⁹ are not always consistent. The "unpaid balance" is the balance of the cash price and all other charges included in the amount financed (except the "finance charge") which remain unpaid. Included in the finance charge under the federal law are costs of insurance written in connection with the credit transaction.⁷⁰ A reading of Regulation Z reveals that if they are itemized and disclosed to the customer, certain fees and charges paid to public officials, taxes not included in the cash price, and license fees need not be included in the finance charge because when so itemized they appear separately in the federal disclosure scheme.⁷¹ If they

64. The National Conference of Commissioners on Uniform State Laws consider the enactment of the Truth in Lending Act an unusual opportunity for the early enactment of the Uniform Consumer Credit Code as a more preferable alternative than attempting to superimpose the new federal legislation upon the present hodgepodge of state consumer credit legislation. PREFATORY NOTE TO FINAL DRAFT, UNIFORM CONSUMER CREDIT CODE.

65. Reg. Z, 12 C.F.R. § 226.8(c) (8) (1969).

66. § 408.260(5), RSMo 1967 Supp.

67. 29 OP. MO. ATT'Y GEN. 271 (1969).

68. Reg. Z, 12 C.F.R. § 226.8(b), (c) (1969).

69. §§ 265.070(6), (9), 408.260(5), (6), RSMo 1967 Supp.

70. 15 U.S.C. § 1605 (1968).

71. Reg. Z, 12 C.F.R. § 226.8(c) (4) (1969).

are not so itemized, they appear as a part of the finance charge. Turning to the Missouri phrase "principal balance," the state statute includes the amounts charged for insurance.⁷² Furthermore, the Missouri term includes the amount of "official fees" which are defined as those fees prescribed by law for filing, recording, or otherwise perfecting any title or lien retained by the seller in connection with a retail time transaction.⁷³

After comparing these terms, the opinion concludes that the elements of insurance, taxes, and official fees do not always enter into the calculations for the federal "unpaid balance," but that those elements are necessarily factors in computing the "principal balance" for Missouri disclosure. The terms are not always consistent and "regulated extenders of credit . . . are required only to make those disclosures . . . required by federal law."⁷⁴ After additional analytical comparisons substantially similar to that just described, the opinion draws similar conclusions in respect to four other federal disclosure terms, and rules the comparable Missouri terms inconsistent, and therefore unnecessary.⁷⁵

While finding various disclosure terms inconsistent, the opinion carefully emphasizes that the federal law supersedes the state law only to the extent of any inconsistency. Therefore, any Missouri requirement which is not inconsistent with the federal law remains in full force and effect. Specific examples are cited in the opinion, one being the Missouri requirement that a retail credit sale contract include a description of the trade-in item. This description is not a part of the federal scheme, but nevertheless, the failure to include such a description is a violation of Missouri law. Similarly, the requirements of the Missouri statutes that retail time contracts include a specified "Notice to Buyer"⁷⁶ are not superseded by federal law and still demand creditor compliance.⁷⁷

B. Future Problems

Since Missouri law is superseded only to the extent of any "actual inconsistency," the complexity of the process of statutory construction necessary to ascertain this inconsistency places a considerable burden upon the creditor. The fact that an opinion of the Attorney General was requested demonstrates the uncertainty which the creditor faces. The cred-

72. § 408.260, RSMo 1967 Supp.

73. § 408.250, RSMo 1967 Supp.

74. 29 OP. MO. ATT'Y GEN. 271 (1969).

75. *Id.* The opinion concludes also that the federal term "finance charge" is inconsistent with the Missouri terms "time price differential" and "time charge." Likewise, the terms "finance charge" and "amount financed" used by the federal law are not always consistent with the state terminology "the amount of the time charge" and "principal amount of the loan, excluding interest." The opinion also concludes that there are substantive differences between certain terms required by Regulation Z and related requirements of the Motor Vehicle Time Sales Act and the Retail Credit Sales Act which make it unnecessary for a creditor who must make the federally required disclosures to comply with Missouri law.

76. § 365.070 (2), RSMo 1967 Supp.

77. These examples are cited merely by way of illustration and are not meant to be a complete listing.

itor must at his own peril compare the state and federal laws and carefully analyze both the substantive content and the disclosure format of each to ascertain the extent to which the state law is "inconsistent" with the federal law. If he concludes they are inconsistent, then compliance with federal law is sufficient. A conclusion to the contrary requires compliance with both federal and state legislation.

As a practical matter the creditor will either attempt a wholesale integration of the state law into the federal scheme or will simply make two separate disclosures, one to satisfy each law. In regard to the first alternative, an attempted integration would not only pollute the disclosure format of the federal law, but would likely violate the Truth in Lending Act because if the creditor mistakenly integrated an "inconsistency," he would contravene the federal directive to include such inconsistent state disclosures only in a clearly segregated portion of the disclosure statement. On the other hand, two separate disclosures of what is essentially very similar information would only serve to duplicate effort, and confuse the consumer.

In addition, it should be recognized that the thrust of the state law has traditionally been colored by notions of usury. A system of credit cost regulation is the primary function of such legislative programs. The propriety of such a scheme is beyond the scope of this discussion and its desirability will not be controverted. The federal "annual percentage rate" is not an interest rate as that term is used in state statutes, and hence there exists an inconsistency which strikes at the heart of the state system. It is submitted that this inconsistency is the only substantial difference between the state and federal plans. The state disclosure requirements which are "inconsistent" are more likely simply the result of two different legislative draftsmen. Thus, basically it is the goals of the two systems which are dissimilar: the federal law aimed at disclosure alone and the state law designed with usury in mind.

Given the confusion when both the creditor and the consumer are subjected to two separate and independent legislative schemes of the nature described, only one conclusion can be drawn. The Truth in Lending Act and Regulation Z demand a complete review and revision of the Missouri consumer credit laws. The disclosure variances are needless and can easily be satisfied by a coordinated state legislative program. A revision, however, need not subvert the already declared policies of the Missouri legislature with respect to the regulation of consumer credit costs.

A planned integration of state and federal consumer credit laws is a realistic and accessible goal. In anticipation of the enactment of Truth in Lending, the National Conference of Commissioners on Uniform State Laws drafted the Uniform Consumer Credit Code to complement the federal laws.⁷⁸ In essence the uniform act is but a reflection of the Truth in Lending Act, for compliance with its disclosure requirements will also

78. The Final Draft of the Uniform Consumer Credit Code was approved by the National Conference of Commissioners on Uniform State Laws on July 30, 1968, and by the American Bar Association on August 7, 1968.

satisfy the demands of the federal law.⁷⁹ Because the uniform act is designed to become state law, it contains provisions which regulate the amount of the charges which can be imposed upon various types of credit transactions.

Finally, while a revision of the consumer credit laws in Missouri would be unable to eliminate entirely the notion of usury protection,⁸⁰ any reconsideration should explore the desirability of uniform cost disclosures, all of which would be comparable in the same statutory scheme. Variable cost ceilings could be imposed which would reflect the higher costs of operation involved in small consumer loan financing,⁸¹ thus preserving credit cost regulation in an integrated legislative plan.

IV. CONCLUSION

Federal legislation in the area of consumer credit protection is now a *fait accompli*. Unfortunately it operates not in a vacuum, but rather in the context of the legislation of each of the several states. Therefore, each state must now examine its existing laws in an attempt to coordinate them with the requirements of the federal act. Failure of this integration can lead only to increased rather than diminished consumer confusion, and unnecessary burdens on the diligent creditor who must perform the judicial function of interpreting "inconsistent" statutes at his own peril. Since the federal act itself does not promote the prevalent state policy of credit regulation, the states' desire to retain this control over the overreaching creditor will need to be preserved. Ample room exists in a coordinated state legislative program to meet the disclosure requirements of the federal law while at the same time protecting resident consumers.

STEPHEN K. TAYLOR

79. Drafted in anticipation of the federal legislation on consumer credit, compliance with the provisions of the uniform act will exempt affected creditors from the requirements of the federal act. See PREFATORY NOTE TO FINAL DRAFT, UNIFORM CONSUMER CREDIT CODE.

80. This situation led Andrew F. Brimmer, a member of the Federal Reserve Board, to call last week for the "early abolition" of usury ceilings. He contended that whatever protection usury laws provide to consumers against gouging by unethical lenders will become unnecessary when the new Federal "truth-in-lending" law goes into effect next year. . . .
The Wall Street Journal, June 4, 1968, col. 1, p. 1.

81. For an analysis of the operational costs of the consumer creditor, see Upton, *The Economics of Fair Charges for Consumer Loans*, 16 MO. L. REV. 274 (1951).