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The North Dakota Small Loans Act

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account for his convenience only, and not for the purpose of making a gift to the co-depositor. The funds shall belong exclusively to the depositor, subject only to claims arising under other rules of law. Nothing contained in this section shall prohibit a reformation of the account upon a showing of fraud or mistake.

Section 10. The law shall apply to all accounts opened subsequent to its adoption. A depositor may subject an account opened prior to the date of this law to the provisions of this act by executing a new signature card, witnessed by an officer or authorized employee, on any day after the adoption of this law.

Section 11. All laws inconsistent with the provisions of this act are hereby repealed.

Section 12. This act shall become effective immediately.

THE NORTH DAKOTA SMALL LOANS ACT

In an outburst of commercial recognition uncommon to this agricultural state the legislature of North Dakota in its 1959 session brought forth a series of measures concerning the regulation of consumer credit. The hastily drawn Retail Installment Sales Act, passed during the 1957 session, was comprehensively amended.[1] A measure was enacted regulating one of the newer commercial innovations, the revolving charge account,[2] and the small loan industry of North Dakota was legalized under a North Dakota Small Loans Act.[3] This article will concern itself with the latter enactment, and with the background and history necessitating its passage.

I. GENERAL BACKGROUND

The small loan business, or the preferred term since it has reached maturity — the consumer finance industry — has become an important factor in the economy of the United States. As of July 1960 its outstanding credits totaled over four billion dollars.[4] While this shows an amazing increase over the past several decades keeping pace with general installment credit,[5] the rate of increase at present indicates a leveling off and financial maturity.[6]

Much of the credit for the development of the neighborhood

1. N.D. Laws 1959, c. 268, amending N.D. Rev. Code § 51-13 (1957 Supp.). The original was apparently based on a motor vehicle statute and expanded to include all goods, making for incongruities and commercially inapplicable sections.
2. N.D. Laws 1959, c. 350 (service charge not to exceed 1½% per month on the outstanding indebtedness).
3. N.D. Laws 1959, c. 136.
4. *Financial and Business Statistics*, Fed. Reserve Bull., Sept. 1960, p. 1047. Outstanding installment credit among consumer finance companies totals $4,035,000,000.
5. *Ibid.*
6. *Consumer Credit Expansion*, Fed. Reserve Bull., April 1960, p. 3.

"loan shark" into a nationwide corporation, and the local scandal into a respectable financial institution must go to the regulatory small loan act and its originators. The Russell Sage Foundation should be singled out as an innovator and pioneer in the field. A philanthropic corporation operating in various areas of social research, its department of Consumer Credit Studies rendered it a leader in the field of small loan legislation.[7] The Foundation began its studies in 1907 and first attempted to set up remedial loan associations on a semi-philanthropic basis. By 1916 they had determined the demand could only be met by commercial sources. From this determination came recommendations for legislation to increase the maximum rates for small loans and protect borrowers from prevailing extortionate practices.[8] The first draft of their Uniform Small Loans Law was accordingly published on November 29, 1916.

The effectiveness of the Uniform Small Loan Law (USLL) as a model for legislation can be seen in the fact that of the forty-nine states having some form of small loan legislation today[9] the overwhelming majority are based on one of the seven drafts of the Uniform Small Loans Law; and of those pieces of effectual legislaton the states are nearly unanimous in using the framework of the USLL.

In considering the depth of the problem which faced the drafters and the product of its present general application,[10] it might be truly said that "[T]he Uniform Small Loan Law, prepared by the Russell Sage Foundation, has proved to be one of the most successful pieces of remedial legislation in our generation."[11] The average borrower, a wage earner with dependents and an income under the national average,[12] has been protected from a threat against which he had neither the financial resources nor the financial understand-

7. See generally Hubachek, *The Development of Regulatory Small Loans Laws,* 8 Law & Contemp. Prob. 108 (1914); Sisler, *Organization of Public Opinion for Effective Measures Against Loan Sharks,* 8 Law & Contemp. Prob. 183 (1941). Incorporated by act of the New York Legislature in 1907, the Russell Sage Foundation was endowed with $15 million by Mrs. Sage "for improvement of social and living conditions in the United States."

8. *Ibid.* Also, Barrett, *Compilation of Consumer Finance* Laws, XIII, XIV (1952).

9. Together with North Dakota, Montana enacted a "Consumer Loan Act" in its 1959 session (Mont. Sess. Laws, c. 283) leaving only Arkansas with no legislation in the field. See Mors, *Small Loan Laws* (12th ed. 1958) for charts of the various laws in force in the states as of 1958, and Hubachek, *Annotations on Small Loan Laws* (1938) for an older analysis.

10. See Hubachek, *Progress and Problems in Regulation of Consumer Credit,* 19 Law & Contemp. Prob. 4 (1954).

11. Smith, *What Lies Ahead in the Feld of Small Loans,* 19 Law & Contemp. Prob. 120 (1954).

12. Kelso, *The Social and Economic Background of the Small Loan Problem,* 16 Mo. L. Rev. 197 (1951). The average size loan across the nation is about $345 — see note 15 *infra.*

ing to protect himself. It must be remembered that the finances of the consumer are more and more being run on an installment credit basis.[13] A giant in this field has analyzed it as a need: "For phychological reasons the American people want the incentive to save which they get by first obtaining possession of their object — be it a home, household furnishings, an automobile, or just to be clear of a lot of bills."[14]

II. THE NORTH DAKOTA PROBLEM

On the heels of a report by the state Public Welfare Board, revealing interest rates of up to 300 per cent per annum on loans in what was termed a "million dollar business" in North Dakota, the Attorney General in 1957 insituted proceedings against the Peerless Finance Company of Fargo.[15] The resulting receivership for gross violations of the usury laws[16] was upheld by the state Supreme Court.[17] The size of operations and rates ranging from 149 to 277 per cent awakened officers of the state to the fact that this agricultural area was not immue from the perils of the urban "loan shark". Following through on the threat of the Attorney General to make a determined effort to enforce the usury laws, the local small loans industry — in a prime example of enlightened self interest — brought pressure to bear for the passage of an adequate small loan law.[18] National consumer finance companies, which had not entered the state for lack of such a law, also made their influence felt.[19] The problem was covered by legislative committee. Overriding objections to any comprehensive exception to the usury laws,[20] a draft was presented to the legislature. This bill recognized the need for a higher rate of interest on its special class of credit[21] in this case

13. The Fed. Reserve Bull., Sept. 1960, p. 1046, states: Consumer credit in 1939: installment — $4.5 billion; noninstallment — $2,.7 billion. Consumer credit in 1960: installment — $41.7 billion; noninstallment — $11.9 billion.

14. Smith, *supra* note 11, at 122.

15. See *Legislative Research Committee Report on Credit Practices to the 36th Legislative Assembly* (1958); Note, *The Small Loan Problem in North Dakota*, 34 N.D.L. Rev. 160, (1958).

16. N.D. Rev. Code §§ 47-1409, 10, 11 (1943).

17. State *ex rel.* Burgum v. Hooker, 87 N.W.2d 337 (N.D. 1957).

18. See generally, *Minutes of the Subcommittee on Credit Practices* (1958).

19. *Ibid.*

20. *E. g.*, letter from Abner B. Larson, Secretary-treasurer of the C.C.C. "[T]he state of North Dakota should be a shining example of protection to its citizens, instead of legalizing robbery of many of its citizens." *Minutes of the Subcommittee Credit Practices*, May 26, 1958.

21. Committee Report, *supra* note 15, explains:

(1) The cost of investigation is almost as high as for loans of larger amounts.
(2) If security is taken the cost of preparation, recording fees, etc., is about the same.
(3) The risks are somewhat higher.
(4) The cost of processing numerous small payments and more numerous renewals is increased.
(5) More vigorous collection efforts are required.

those loans under $1,000 and of less than 24½ months duration.[22] Passed by the legislature and submitted to a referendum of the voters, the act went into effect on July 28, 1960.[23]

III. A BIT OF COMPARATIVE ANALYSIS

Statutes based on one or more of the seven drafts of the USLL, which includes the North Dakota act, are complex in detail but their provisions may be grouped under several general headings: (1) Lenders under the law are licensed upon meeting certain tests of fitness and their activities are subject to supervision and regulation by a state offical. (2) A maximum loan size for loans made under the privileges of the act is set up. (3) A maximum rate is set, usually on a monthly percentage, at rates well above those authorized by the usury laws. (4) Provisions of the required written contract of loan are outlined. (5) Prohibitions against subterfuge are provided. Such devices of evasion as wage buying, tie-in sales, sideline business, and false or misleading advertising are provided against. (6) There are civil and criminal penalties for violations. (7) Commercial banks, industrial banks, savings and loan associations, credit unions, and other legal lending institutions are exempted from the privileges and penalties of this law.

In attempting to analyze the North Dakota law, a comparison will be made with two model acts to uncover possible areas of difficulty or incompleteness. Of the two acts to be used, the seventh draft of the USLL was the last work of the Russell Sage Foundation before leaving the field to the now well organized consumer finance industry; the Model Consumer Finance Act (MCFA)[24] was a subsequent production of the National Consumer Finance Association. It should be noted that in almost every change from the USLL, the MCFA is more liberal toward the lending agent.

In the area of administration the North Dakota law provides for revocation or suspension of any issued license on enumerrated grounds, *e. g.*, violations of *any* provision of the act. A hearing is held on ten days notice. The hearing procedure and right to judicial review are governed by the uniform administrative procedure provisions of the Code.[25] This procedure follows the USLL[26] and im-

22. N.D. Laws 1959, c. 136 §§ 3(a), 14(c); see also *Minutes of the Subcommittee on Credit Practices*, July 22, 1958, wherein a company representative states that 24 months should be sufficient. If a loan runs too long a time the interest burden may complicate the borrowers immediate problem rather than solving it. However long term loans involve greater profits for the lender.

23. North Dakota Attorney General's Opinion, July 6, 1960.

24. For copies, see Barrett, *Compilation of Consumer Finance Laws*, app. B (1952), see app. A for the Uniform Small Loan Law.

25. N.D. Laws 1959, c. 136, § 8.

26. Uniform Small Loan Law § 7 [hereinafter cited as USLL].

proves upon it by providing a uniform administrative procedure. The MFCA would require a prior cease and desist order and continued violation before the hearing on revocation.[27] Also important to the administration of the act will be the power of the examiner to issue administrative regulations governing particulars of the licensees' actions. The USLL gives him the power to issue regulations "in addition thereto and not inconsistent herewith,"[28] the MCFA, those "necessary for the enforcement of the act and consistent with all of its provisions".[29] The examiner in North Dakota has the power to issue all regulations in accord with the administrative procedure of the Code and "reasonably necessary" to carry out the provisions of the act,[30] thus occupying an apparent middle ground between the liberal provisions of the USLL and the more restricted authority under the MCFA.

Certain restrictions on the licensees are necessary to enable the administrator to keep that close contact required for effective regulation. The North Dakota act would not allow the licensee to move his office from the city without meeting the requirements for a new license, or within the city without approval of the examiner.[31] This follows the USLL,[32] while the MCFA only requires three days notice to the examiner and no power to restrict moving.[33] The USLL allows no loans to be made outside the licensed office,[34] but North Dakota would allow loans by mail and to residents of other areas.[35]

In certain areas North Dakota is more restrictive than either of the model acts. Where the MCFA allows wage assignments under the existing statutory requirements[36] and the USLL sets up detailed requirements to protect the borrower[37] North Dakota outlaws all future assignments of wages, commissions, etc. by licensees.[38] Both the USLL and MCFA allow recovery on foreign loans made under similar acts in other states[39] where North Dakota allows no recovery on foreign loans in excess of that authorized by statute in North Dakota.[40]

27. Model Consumer Finance Act § 7(a) [hereinafter cited as MCFA].
28. USLL § 10(a).
29. MCFA § 10(a).
30. N.D. Laws 1959, c. 136, § 11(a).
31. *Id.* § 7(b).
32. USLL § 6(b).
33. MCFA § 6(b).
34. USLL § 12(b).
35. N.D. Laws 1959, c. 136, § 7(c).
36. MCFA § 17.
37. USLL § 17.
38. N.D. Laws 1959, c. 136, § 17.
39. USLL, MCFA § § 18.
40. N.D. Laws 1959, c. 136, § 19.

The question which looms largest in the minds of borrowers is that of charges. North Dakota provides for a 2½% a month charge on the first $250, 2% on the next $250, 1¾% on the third $250, and 1½% on that amount between $750 and $1,000.[41] The legal rate, 7% per annum, would apparently apply to any amount over $1000.[42] The USLL began its early drafts on a monthly rate of 3½% then cut it to a graduated rate beginning at 3% on its seventh draft.[43] It is difficult to compare graduated rates as between states since the rates may break at different levels, the rate may vary at these levels, and there may be a differing number of breaks. However it may be said generally that while most states begin at a higher rate North Dakota at least equalizes this by greater rates at higher levels.[44]

There are also certain features contained within the North Dakota act which are in neither of the older model acts. One is an apparent alternative allowance of precomputation of charges rather than the traditional straight interest;[45] another provides for credit insurance sales by lenders to borrowers.[46] Precomputation is a more modern simplified method of computing charges whereby it is all figured in advance rather than at the time of payment. However the method has not yet received complete acceptance among the members of the industry.[47] Also in dispute and of a more intensive nature is the validity of credit insurance sales by lenders.[48] By allowing the licensees to profit from insurance sales outside the authorized special rates on small loans, North Dakota has broken what has been called a cardinal principle of effective small loan legislation: that all charges must be included in the overall maximum charge.[49] It has been argued that this too can be regulated in an

41. *Id.* § 14(a).

42. *Id.* § 16; North Dakota Attorney General's Opinion, August 16, 1960. The latter explains away a difference from the bill as recorded in the legislative journal which would require the legal rate on the entire amount for those loans over $1,000. See also, Hartung, *Adequate Small Loans Ceilings*, 8 Per. Fin. Law Q. Rep. 33 (1954) ($1,000 thought to be a reasonable maximum at present).

43. Barrett, *supra* note 8.

44. *Compare* N.D. Laws 1959, c. 136, § 14(a), *with* table 4 pp. 7-9 of Mors, *supra* note 9.

45. N.D. Laws 1959, c. 136, § 14(a) (equivalent interest rate per annum must also be stated on the contract), see also *Subcommittee Minutes*, April 24, 1958, wherein the North Dakota Small Loans Association asks for precomputed charges based on a given dollars per hundred per year.

46. N.D. Laws 1959, c. 136, § 18.

47. See generally *A Symposium on Precomputation*, 12 Per. Fin. Law Q. Rep. 2 (1957).

48. See Mors, *supra* note 9, at 28-30; Seymour, *Trend to Insurance Provisions in Small Loan Statutes*, 6 Per. Fin. Law Q. Rep. 33 (1952); Snepp, *N.C. Insurance Restrictions Limit But Do Not Cure Small Loan Abuses*, 5 Per. Fin. Law Q. Rep. 83 (1951); Vernon, *Regulated Credit Life and Disability Insurance and the Small Loan*, 29 N.Y.U. Law Rev. 1098 (1954) (the most exhaustive study).

49. Hubachek, *supra* note 10, at 20 "Like vitamin pills, life and disabilitity insurance may be good for borrowers but licensed lenders should no more be permitted to profit

effective manner[50] and North Dakota makes some provision in this regard.[51] But we have only to turn to the report of a federal committee headed by the late Senator Langer to realize the possibilities of abusive use of credit insurance as a tie-in sale and a method of evading legal rate limits.[52]

As a final comparison with model legislation the Uniform Commercial Code should be mentioned, since it is presently being considered for adoption in North Dakota. As a piece of legislation designed for uniform application the Code does not supersede the small loan or retail installment sales laws, which are of a more local nature.[53] It is rather supplementary to these acts and simplifies secured transactions by setting up a single simplified method of setting up security for loans.[54]

IV. THE CONSTITUTIONAL QUESTION

When at the turn of the century the public was first being awakened to the "loan shark" problem, the sporadic and divergent pieces of legislation put forth were viewed by the courts with skeptical eyes. The statutes, often ill-drafted and ill-suited to obtain a full solution, were questioned and thrown out as class legislation or lacking in uniformity of operation.[55] Even those with a more comprehensive system of regulation and rate control were apt to be declared an invalid exercise of the police power[56] or abridging some other guarantee of the fourteenth amendment.[57] With the arrival in the field of the Russell Sage Foundation and compherensive investi-

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from tie-in sales of insurance than from tie-in sales of vitamin pills."; Mors, *supra* note 9, at 29 "Small loan experience has shown that profits from extra charges of any kind invariably lead to abuses."

50. Seymour, *supra* note 48; Vernon, *supra* note 48.

51. N.D. Laws 1959, c. 136, § 18 where the types of insurance that may be sold are listed. Size of the policy must not exceed the size of loan. The seller must be duly licensed by the insurance commissioner. He must also supply a statement and policy to the borrower and cannot require purchase from himself or an affiliate or decline existing insurance.

52. Langer, *Committee Reports on Credit Insurance*, 9 Per. Fin. Law Q. Rep. 58 (1955). Abusive use of credit insurance sales was found to be so widespread as to affect millions of American borrowers. They also found a growing number of lending agencies whose officers, directors, and stockholders also held positions in credit insurance corporations. However most of the committee's investigation was done in states having inadequate consumer finance laws.

53. See Uniform Commercial Code, Comment at 587.

54. *Id.* art. 9. See also Tisdale, *Secured Transactions and the Uniform Commercial Code*, 36 N.D.L. Rev. 252 (1960); Truscott, *The UCC and Small Loan Operations*, 8 Per. Fin. Law Q. Rep. 100 (1954).

These requirements would give a small loan company a perfected security interest:

(1) A written security agreement signed by the borrower
(2) A simple written financing statement signed by both borrower and lender
(3) Filing of the latter statement in the appropriate office.

55. See *Ex Parte* Sohncke, 148 Cal. 262, 82 Pac. 956 (1905); Rodge v. Kelly, 88 Miss. 209, 40 So. 552 (1906).

56. Such was the case in Commonwealth v. Young, 241 Pa. 458, 94 Atl. 141 (1915).

57. See Massie v. Cessna, 239 Ill. 352, 88 N.E. 152 (1909) (a taking without due process, an invasion of the rights of liberty and property).

gations of ways and means to combat the problem, laws were worked out which met with more favor from the courts.[58]

The main attack on these more inclusive and carefully drawn pieces of legislation was on the question of arbitrary, unreasonable, and discriminatory regulation or classification. Under this heading came unsuccessful suits on questions of due process,[59] special privileges and immunities,[60] equal protection,[61] and general abuse of the police power.[62] The basic provisions on regulation, special rates, and exemption of other lenders, after surviving these attacks under the fourteenth amendment were subjected to state constitutional restrictions on uniform rates of interest,[63] special or local laws[64] class legislation,[65] and impairment of the obligation of contract.[66] In each case the acts were upheld. Suits on specific provisions such as exemption of those financing automobiles,[67] net worth requirements,[68] and the license payment[69] fared no better. The more general and indefinite question of delegation of legislative,[70] executive,[71] or judicial [72] authority was submitted to the courts and once again the answer was negative.

By 1941 the constitutionality of small loan laws based on the USLL had been vigorously tested. Yet in the case of *Kelleher v. Minshull* the Washington Supreme Court, after an exhaustive review of authority, could say:

58. An example of this is found in Wessell v. Timberlake, 95 Ohio St. 21, 116 N.E. 43 (1916) (a predecessor of the USLL).

59. Morgan v. Lowry, 168 Ga. 723, 149 S.E. 37 (1929), *appeal dismissed*, Morgans v. State of Georgia, 281 U.S. 691 (1929); *Ex Parte* Fuller, 15 Cal.2d 425, 102 P.2d 321 (1940); Financial Aid Corp. v. Wallace, 216 Ind. 114, 23 N.E.2d 472 (1939); Richmond v. Conservative Credit System, 10 N.J.Mis. 14, 157 Atl. 446 (1931).

60. Alabama Brokerage Co. v. Boston, 18 Ala.App. 495, 93 So. 289 (1922), *cert. denied* 208 Ala. 242, 94 So. 87 (1922); Financial Aid Corp. v. Wallace, *supra* note 59.

61. *Ex Parte* Fuller, *supra* note 59; Jannett v. Windham, 109 Fla. 129, 153 So. 784 (1933); Morgan v. Lowry, *supra* note 59; Koen v. State, 162 Tenn. 573, 39 S.W.2d 283, 285 (1931) "[T]he selection and classification of the object of legislation or taxation is not capricious or arbitrary and rests upon some reasonable consideration of difference of policy."

62. Family Finance v. Allman, 174 Ga. 467, 163 S.E. 143 (1932); State v. Hill, 129 La. 761, 123 So. 317 (1929); People v. Blumethal, 157 Misc. 543, 284 N.Y.S. 873 (1936); Richmond v. Conservative Credit System, *supra note* 59; Shinn v. Oklahoma City, 184 Okl. 236, 87 P.2d 136 (1939) (a city ordinance).

63. Koen v. State, *supra* note 61.

64. Beasley v. Cahoon, 109 Fla. 106, 147 So. 288 (1933) (not a local or special law nor denial of equal protection even when its application was limited to counties of over 40,000 population); Family Finance v. Allman, *supra* note 62; Financial Aid Corp. v. Wallace, *supra* note 59; Ravitz v. Steurele, 257 Ky. 108, 77 S.W.2d 360 (1934); Gregg v. Personal Finance Co., 164 Mics, 392, 298 N.Y.S. 266 (1937).

65. Financial Aid Corp. v. Wallace, *supra* note 59; Ravitz v. Steurele, *supra* note 64.

66. Alabama Brokerage Co. v. Boston, *supra* note 60; Richmond v. Conservative Credit System, *supra* note 59.

67. National Accounting v. Dorman, 11 F.Supp. 872 (E.D. Ky. 1955).

68. Ravitz v. Steurele, *supra* note 64.

69. *Ibid.*

70. *Ibid.* Also Morgan v. Lowry, *supra* note 59; Financial Aid Corp. v. Wallace, *supra* note 59; Miller v. Schüster, 227 Iowa 1005, 289 N.W. 702.

71. Ravitz v. Steurele, *supra* note 67; Morgan v. Lowry, *supra* note 59.

72. Morgan v. Lowry, *supra* note 59.

"[A]t the present time, there is no jurisdiction in which a small loan law whose structure is substantially the same as that of that of the Uniform Small Loan Law recommended by the Russell Sage Foundation in its sixth draft is held unconstitutional."[73]

These acts stood up under the test of such varying and unlikely constitutional provisions as those relating to expression of the object in the title,[74] "suspension of operation of law except by general assembly",[75] and "the sole object of government is the protection of life, liberty, and property."[76] At the same time the investigative processes survived the constitutional prohibition on illegal searches and seizures.[77]

Cases which have arisen subsequent to the *Kelleher case* have either upheld similar laws with little comment[78] or have been decided on more narrow issues. The provision of the seventh draft of the USLL setting up convenience and advantage to the community as a basis for granting or denying licenses has been upheld.[79] While limitations on judicial review[80] and provisions in conflict with more absolute constitutional restrictions on lending have been invalidated.[81]

How then does this background apply to the North Dakota law? The federal constitutional question appears settled, while any particularly applicable provisions of the North Dakota Constitution are apparently within the general range of decided cases.[82] The North Dakota Small Loan Act by following the outlines of the USLL walks a path within the traveled area of constitutionality.

V. CONCLUSION

Based on the seventh draft of a piece of legislation tempered by over thirty years experience and experimentation in the field, the North Dakota Act can hardly be inadequate in any major provision.

73. Kelleher v. Minshull, 11 Wash.2d 380, 119 P.2d 302, 305 (1941).
74. Richmond v. Conservative Credit System, *supra* note 59; *cf.* Koen v. State, *supra* note 61 (one object in both title and act); Morgan v. Lowry, *supra* note 59 (referring to more than one subject matter).
75. Financial Aid Corp. v. Wallace, *supra* note 59.
76. Alabama Brokerage v. Boston, *supra* note 60.
77. Financial Aid v. Wallace, *supra* note 59.
78. See Peel v. Dumanit, 308 Ky. 399, 214, S.W.2d 605 (1948); Solof v. City of Chattanooga, 180 Tenn. 296, 174 S.W.2d 471 (1943).
79. Family Finance Corp. v. Goagh, 10 N.J. Super 13, 76 A.2d 82 (1950); Family Finance Corp. v. Gaffner, 11 N.J. 565, 95 A.2d 407, (1953) (before and after constitutional revision).
80. First Industrial Loan Co. v. Daugherty, 26 Cal.2d 545, 159 P.2d 921 (1945).
81. Strickler v. State Auto Finance Co., 249 S.W.2d 307 (Ark. 1952) (service charges in addition to 10% interest are in violation of constitutional limitation of rate of interest); Household Finance v. Shaffner, 356 Mo. 804, 203 S.W.2d 307 (1947) (constitutional revision invalidated exemption of other lenders from the privileges of the law).
82. See N.D. Const. § 20, ". . . nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens."; and § 70, ". . . where a general law can be made applicable, no special law shall be enacted; nor shall the legislative assembly indirectly enact such special or local law."

The questioned provisions regarding insurance must be tested and scrutinized by able administration, as should determination of rates. For only by experience and more complete statistics can it be determined what is fair for both borrowers and lenders of this region.[83] Indeed, this is the heart of effective regulation of consumer finance: able administration[84] coupled with the development of an enlightened industry which disciplines and advances itself into a financial institution rather than an economic blight.[85]

While North Dakota can look with a good measure of pride on its new legislation, it should be noted that those who are considered "thinkers" in the field advocate the formulation of a consumer credit code[86] abolishing the gaps and inconsistencies of separate and not always coordinated pieces of legislative enactment. If this then be the direction of the future it must be seriously considered by forward looking lawmakers.

J. PHILLIP JOHNSON.

SEARCH AND SEIZURES: 1960

The right of freedom from unreasonable search and seizure has always been one of the cornerstones of the American constitutional system. In 1960 the Supreme Court of the United States handed down three decisions that profoundly affected this fundamental principle of law. On the one hand the Court substantially strengthened the protection of the Fourth Amendment so far as state officers are concerned by repudiating the so-called "silver platter" doctrine,[1] under which evidence obtained by these officers in an illegal fashion was nonetheless admissible in the federal courts. Conversely the decisions upholding the right of compulsory inspection by state

83. See Miller, *The Economics of Fair Charges*, 16 Mo. L. Rev. 274 (1951). The small loan laws are virtually alone in requiring that all charges be denominated interest. Other lending agencies charge the ordinary contract rate of interest and charge separately for services.

84. See Sullivan, *Administration of a Regulatory Small Loan Law*, 8 Law & Contemp. Prob. 146 (1941). While the North Dakota act went into effect in July 1960 it was not until August that funds were available for administration, leaving issuance of licenses until October. Letter from Alf Hager, Deputy Examiner, Small Loans Division, Oct. 31, 190.

85. Hubachek, *The Development of Regulatory Small Loan Laws*, 8 Law & Contemp. Prob. 108, 126 (1941) "Morality has been achieved in this business not by the mere passage of a law but by fostering a remedial business which, from enlightened self interest polices its own area with everlasting vigilance and vigor."; Redfield, *The Responsibility of all Consumer Lending Agencies to Help Eliminate the Loan Shark Evil*, 19 Law & Contemp. Prob. 104 (1954).

86. Henderson, *The Future of the Loan Shark and Consumer Credit Agencies*, 19 Law & Contemp. Prob. 127 (1954); Hubachek, *The Drift Toward a Consumer Credit Code*, 16 U. Chi. L. R. 609 (1949).

1. Lustig v. United States, 338 U.S. 74, 78 (1948). Stated "The crux of that doctrine is that a search is a search by a federal official if he had a hand in it; it is not a search by a federal official if evidence secured by state authorities is turned over to the federal authorities on a silver platter" (Felix Frankfurter for the majority).