

Speech by: Robert Morgan  
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To: North Carolina Consumer Finance  
Association

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ON SOME UNANSWERED QUESTIONS ABOUT THE  
UNIFORM CONSUMER CREDIT CODE

A great deal has been said lately about the Uniform Consumer Credit Code. Its adoption is already a fact in a few states, having been rejected or modified in a few others. North Carolina must inevitably "consider" the adoption of the Uniform Consumer Credit Code but before we do, we ought to be satisfied as to the desirability of repeal of our extant laws and their replacement with an untried system, and we ought to have some answers to the very serious questions that the Uniform Consumer Credit Code poses in trying to "live with it."

Today, I want to raise some of these questions before this body, in order that you may consider them, not in the chaos that is born of haste, but rather with the confidence resulting from reflection. Some of these questions are perhaps more in the ambit of the sociologist or economist than the Attorney General and the Consumer Finance Association. But we are the ones who must supply the information and opinion to the General Assembly for their consideration.

These questions we consider today are by no means an exhaustive list but merely illustrative of the types of problems which immediately come to mind. It is to be expected that further complications will arise, further study will be needed, with the result that nothing should happen quickly. We should be wary of quick adoption of any law, no matter how well conceived, which repeals all our existing laws in the area.

The questions raised by the Uniform Consumer Credit Code may be roughly classed into three areas of general impact. Of course none of these questions is susceptible of analysis from only one point of view for there are three sectors involved: the consumer, the consumer finance industry, and the State of North Carolina, which must protect the consumer and the industry from each other. Let's turn our attention first to the industry.

#### I

The three unanswered questions we need to look at here are what will be the effect of - first - easing the conditions of entry into competition for borrowers, - second - disclosure of the terms of credit

to borrowers, - and third - the limitations on creditor's remedies.

(a) Ease of Entry - under the Uniform Consumer Credit Code anyone who meets the liberal licensing provisions may enter into the consumer credit business. This, it is suggested, is one of the bulwarks of this code. The idea is that free entry will mean free competition, resulting in lower interest or finance charges and the extension of credit to more people, particularly those who are the poorer risks in today's market.

But, (1) do we need unlimited numbers of loan extenders? (2) Isn't the present standard, that is, a showing of "convenience and advantage," a good one? (3) Would easy entry with no geographical limit hurt some of the smaller members of this association? (4) Would easy entry re-open the doors to those unscrupulous operators that you, as men of integrity, have been so admirably purging from your ranks since the early days of the Russell Sage Foundation? (5) And isn't it perhaps naive to think that competition among lenders, without attention to the cost at which you must get the money, isn't it naive and shortsighted to think that

you will be able to reduce the inflationary spiral by yourselves? Thus the 36% small loan interest ceiling might be a target rather than a limit.

(b) As to the provisions requiring "disclosure of the terms of credit," let's not delude ourselves into thinking that full disclosure will be very much of a safeguard. The man who is, in what you as lenders would call, a high risk loan class, is not in the bargaining position such that telling him how much the loan will cost will affect his decision. His need for credit is great enough that if you are willing to take the risk, he will pay the asking price. This class of borrower (and poor financial circumstances respect no racial or color line) is exactly the man intended to be protected by the "full disclosure" yet, he is the man least able to act on that information.

There is a further problem of literacy and whether there is a moral or legal obligation to make sure each borrower understands the effect of his signature. It would amaze you to know how many people are "functional illiterates" and too embarrassed to admit it.

(EXAMPLE: Many criminals, if handed a MIRANDA warning card will say they understand, but in reality can't read. Here the price of illiteracy is liberty, not mere property as with loan rate disclosure.)

In short, it serves little to warn a man that a signature has a certain legal result when we know in advance that his course of action is already determined.

(c) The last area of this sector is the limitation on creditors' remedies. The Uniform Consumer Credit Code limits negotiable instruments. Is the effect of this that anyone to whom the rights to payment are assigned by the seller must consider that, if the seller does not fulfill his legal obligations under the credit sale, the financing agency will be subject to the buyer's defenses? Doesn't this remove the historical insulation of the holder in due course? Is this a desirable thing to do across the board? Will this have the effect of requiring you as businessmen to now consider the reputation of the merchant whose "paper" you are buying?

A partial listing of other creditor restrictions goes like this:

- (1) There can be no assignment of earnings, though voluntary deductions are authorized;
- (2) Confessions of judgment are prohibited;
- (3) Deficiency judgments cannot be obtained after repossession or surrender of goods when the cash price is less than \$1000.

Quite a list! Yet, will the net effect of these provisions be that a risky business is made even less secure? As the risk increases, will the inability to collect make the initial extension of credit more costly to the consumer? Is the law weighted in favor of the consumer? We have no real experience with the code to show us where we are going. To most of the finance community, these remedies already go unused. Perhaps the limitations would limit those who give you a black eye by not meeting your high standards of conduct.

## II

As far as the consumer is concerned, the same questions pertinent to the industry are relevant here. Will there be any real competition which would drive down the price of credit and extend credit to those who

historically have been poorer risks? Are the rate ceilings just that - ceilings - or will they become "rates," that is, the industry standard? Will more borrowing contribute to more consumption, to higher prices, to higher credit costs to you as an industry and ultimately, higher prices to the man who started the spiral? Should we worry less about consumer protection and concentrate on the Consumer Finance Association's project, "Consumer Education?"

Is this the answer to the problem, the happy ending, if there is one? Does the best course consist of educating the consumer so that he may become a more enlightened and responsible member of the economic community?

Along these lines, I would like to applaud your project of consumer education. I've had the honor and pleasure of being involved in this project and it is commendable; showing outstanding consumer concern and professional integrity. Let's not get lax but rather, continue to attack this problem in a realistic manner, striving to extend your education program to the lowest economic levels where the credit is hardest to get and most costly if you do.



Consider further, if you will, the alternatives open to a man who is a poor risk. If he needs to borrow money and if your remedies against him are severely restricted, will there be a reaction to this risk in the form of denying the loans? If the small loan industry closes the door, who is left but the organized criminal elements? With the underworld, the rates of interest are unbelievable and collection procedures are much stricter, in fact, deadly. Thus, will the "poor risk" consumer be hurt by those very provisions which purport to help him?

Why is there this drive to consume? A sociologist, David Caplovitz, says: "Through the mass media, Americans in all walks of life are bombarded with messages to buy now and pay later." "Easy payment plans" and "no money down" are slogans luring even the poor into the market, where in spite of the risk, there are merchants prepared to extend them credit, then sell you the "paper." The uneducated poor have restricted means of occupational mobility and resort to "compensatory consumption" as their attempt to grab at the brass ring representing the "good life" on the financial merry-go-round. Appliances, automobiles and the dream of a home of their own can become

compensations for blocked and social mobility.

Of course, the poor do not make up all clientele, but the uneducated consumer is the man I, as Attorney General, want to especially protect. That's another reason I applaud your consumer education efforts.

### III

The impact of the adoption of the Uniform Consumer Credit Code on state government is both predictable and unknown. Structurally, the proper administration of the Uniform Consumer Credit Code calls for the supervision of the Act by one body. We presently supervise the lending industry through a variety of means. The creation of a new body, with representatives of the old bodies, may not be true to the spirit of the Act. Will this body just be another of the rapidly proliferating number of state agencies? We are trying to reduce the number of state agencies, not expand it.

Who would pick the administrator? The Act leaves undecided the question of whether the administrator shall be a single state official or department; two or more state officials or departments or a commission. Is it wise to leave the appointment of the man or body who will regulate your industry to a political officeholder who may know nothing about your problems? If the administrator

is from your industry, will there be a conflict of interest?

There are many unanswered questions which I am sure you have about this proposed new regulation of your industry. As Attorney General I, too, have some serious questions about the impact of this proposed code on all sectors of life in North Carolina with which the office of Attorney General legitimately concerns itself. In short, we owe it to ourselves to give serious consideration to any law, in any area, which has such far reaching impact.

I understand that Senator Baggett of Oklahoma is coming to speak to the North Carolina Merchant's Association, and I look forward to hearing his opinion. Oklahoma has the Uniform Consumer Code.

In conclusion, let me say that I know of no other industry that has tried so hard and made such great strides in restoring confidence in its integrity. To paraphrase a popular TV commercial - "You've come a long way ... to get where you've got to today." I share your pride and urge that we continue our efforts in consumer education, which will result inevitably in consumer protection.