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EDITORIAL POLICY STATEMENT

Advancing the Consumer Interest is designed to appeal to professionals who explore consumer problems and help to shape consumer behavior and consumer policies. This includes teachers in higher and secondary education, researchers, extension specialists, consumer affairs professionals in business and government, journalists, lawyers, students in consumer science, and other practitioners in consumer affairs.

Manuscripts may address significant trends in consumer affairs.

Suggested content may include:

1. Position papers on important issues in consumer affairs, education, and law.
2. Description and analysis of exemplary education, extension, community, and other consumer programs.
3. Research reported at a level of technical sophistication applicable to practitioners as well as researchers. The emphasis of this research should be on its implications and applications for consumer education, policy, law, etc. The primary question of the reported research should be, "What does this research mean for practitioners?"
4. Application of theories, models, concepts, and/or research findings to problem solutions for target audiences.
5. Articles summarizing research in a given area and expanding on its implications for the target audience.
6. Letters and sustained responses to items previously published in ACI.

The *Guidelines for Authors Submitting Articles* are printed inside the back cover.

Advancing the Consumer Interest

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COMBINED ISSUE

This is a special combined issue, joining together Vol. 11, No. 2 and Vol. 12, No. 1. As you consider with justifiable impatience the tardiness of Volume 11, you might at the same time appreciate the timeliness of Volume 12. In any event, the scholarship reflected in this volume may be worth the wait. We hope that you will enjoy the contents of this combined issue.

PREEMPTION, SOVEREIGNTY, AND INTERNATIONAL CONSUMER POLICIES

Among the most significant policy questions facing professionals in consumer affairs is determining what level of government should be charged with making rules about consumer protection. Traditionally, the issue of "preemption" has, at least in the United States, been understood to focus upon whether certain protection rules should be left to cities instead of states, or to states instead of the federal government. Whether a town or a state could enact Sunday closing laws, for example, was a matter of religious and consumer concern several decades ago. Whether states and localities can impose different rules today—for example, about welfare benefits, consumer tort claims, or vehicle safety—are questions that often work their way through the courts. Occasionally such disputes end up in the U.S. Supreme Court for resolution—on the basis of an appropriate division of labor between national and state "sovereignties" or sometimes local customs and traditions.

This issue of ACI again explores topics that test the appropriate location for consumer policy decision-making. Jean Ann Fox, in her article "Safe Harbor for Usury," traces recent debates over "alternative financial sector" lending methods, which have not, until recently, been much regulated.

Lately, however, there have been fierce battles, mostly in state legislatures and state courts, over the merit of permitting such nontraditional lending methods and the degree to which the rates and substance of consumer contracts should be regulated. Among the potentially troubling cautions contained in her article is the extent to which federal legislative activity may preempt the states from acting as laboratories for experimenting with appropriate consumer protection responses to the payday loan phenomenon.

A newer type of "preemption" problem has become increasingly important: the degree to which international bodies may displace or inhibit the implementation of national consumer policies. There have been foresighted members of ACCI who have been ahead of the curve with respect to these newer problems. Robert Meyer, Margaret Charters, and Robert Kerton, among others, have been active in promoting awareness on this front. Professor Richard Morse, the driving force behind U.S. Truth in Lending and Truth in Savings legislation, has urged consumer professionals in the United States to pay attention to the need for unified international rate and yield disclosure rules. Recent developments connected to the Trans Atlantic Consumer Dialogue indicate that the quality of U.S. consumer participation in international economic decision-making may be improving. Especially when they are workable and effective, it matters whether U.S. rules, or foreign ones, apply.

In addition to more traditional cases of preemption discussed in this issue's Legal Digest—concerning credit, warrantees, and automobiles—is a discussion of the beef hormone cases that have been decided in European and international tribunals.



Whether meat treated with growth hormones should be allowed to reach domestic markets may, now and in the future, be answered by international rather than federal or state authorities.

SPECIAL SECTION: ASIAN CONSUMER MOVEMENTS

Two scholarly examinations consider developments in Asia, particularly in Japan and Taiwan. Professor McGregor's study of the special nature of Taiwan helps illuminate the differences between the nature and pace of consumer protest and protection in newly industrialized countries and other countries, advancing comparative understanding of consumer movements. Professors Morita, Mieno, Ikeda, and Ogawa examine the structure of consumer protection laws in Japan, focusing in particular on certain weaknesses of that nation's Consumer Protection Fundamental Law. Of special interest (especially in an era of more and more private mediation or arbitration of consumer disputes), is the insight that greater attention may need to be paid, both in Japan and elsewhere, to reporting about consumer problems.

REACTIONS AND REVIEWS

Rounding out the issue is a reaction by Jeanne Hogarth to an earlier Legal Digest item regarding auto leasing disclosures, and also book reviews by Professors Fletcher and Hatcher of studies and advice concerning child support and retirement. Of particular note to ACCI members will be Professor Kerton's review of Professor Monroe Friedman's provocative book on the subject of boycotts, since those who have been attending past ACCI annual conferences may have heard portions of the book presented and discussed in lively presentations.



To the Editor,

I would like to supplement some of the information provided in the Legal Digest section of the Vol. 11, No. 1 of *Advancing the Consumer Interest* (Spring/Summer 1999). One of the “advances” discussed there referred to a legal case, *Abt v. Mazda American Credit*, in which a court imposed a penalty upon an auto finance company for concealing disposition charges. It is true that the decision in *Abt* interpreted the Consumer Leasing Act in a manner favorable to consumers. However, the discussion did not note that the biggest advance of all in this area concerns regulatory changes, rather than court interpretations. There have been recent, very substantial revisions to the implementing regulations for the Consumer Leasing Act, which are contained within the Federal Reserve’s Regulation M. Under the revised “Reg M,” the type of “hidden fees” cited in the sample case should be a thing of the past. In the new regulation, certain information on cost and terms must be grouped together and separated or segregated from other information in the lease documents. It must be presented in a prescribed format. Allow me to highlight four elements of the new regulations.

First, there is a set of “Fed boxes,” boxed-off portions of a lease agreement that provide a snapshot of what a consumer will pay:

- at the beginning of the lease—which means the amount you will pay at lease signing or delivery;
- during the lease, that is, the monthly or periodic payments;
- other charges that you will face—including any disposition fee; and
- the total amount you will pay—over the lease term.

Second, the disclosures require an itemization of the amount due at lease signing and how that amount will be paid. The disclosures also provide a mathematical progression showing how the monthly payment was determined. Starting with the agreed-upon value of the vehicle and the gross capitalized cost, this calculation shows the additions, subtractions, and divisions that lead to the monthly payment. Third, another section of the segregated disclosures includes information on early termination, excess wear and use, mileage limits and excess mileage charges, and any purchase option at the end of the lease. Finally, the consumer is directed to other disclosures and lease terms elsewhere in the contract (for example, the standards for excess wear).

An example of the new disclosure format and other information on leasing can be found at the Federal Reserve’s Web site, <http://www.federalreserve.gov/pubs/leasing/>.

As always, it’s important to shop, compare, and negotiate when leasing. The new Reg M disclosures went into effect January 1, 1998. Leases signed before this time did not need to meet these new disclosure requirements (in the case cited in the Summer issue, the lease was signed in 1994). However, consumers who choose to lease today should find the new “advanced” disclosures will help them make informed decisions.

Sincerely,

Jeanne M. Hogarth

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Safe Harbor for Usury: Recent Developments in Payday Lending

Jean Ann Fox
Director of Consumer Protection
Consumer Federation of America

PAYDAY LOANS DESCRIBED: COLD CASH FOR "HOT" CHECKS

Payday loans are single-payment short-term small loans advanced in return for personal checks that go by a variety of names, including "deferred presentment," "deferred deposits," "cash advance," or "check loans." In a typical loan the consumer writes a personal check drawn on his bank account for the amount borrowed plus the fee. The fee, stated as a percentage of the check or of the loan, translates into triple-digit annual interest rates. The lender agrees not to deposit the check until the consumer's next payday, or up to 14 days. When the loan is due, the borrower can redeem the check for cash, allow the check to clear through the bank, or pay another fee to extend the loan for another two-week period. A typical loan might call for a charge of \$17.65 to borrow \$100 for two weeks; such a loan can be calculated to carry a 459% annual percentage rate (APR). Payday loans are made by check-cashing outlets, stand-alone payday lenders, and by a few banks in partnership with check-cashing outlets.

This article discusses the treatment of payday loans by state legislatures and in recent court decisions, and suggests an appropriate consumer policy approach to the problem.

VARIATIONS ON PAYDAY LENDING

In some states, payday lenders hide behind subterfuges such as "sale-leaseback" transactions, catalogue sales, or personal advertising schemes. One study revealed many "sales-leaseback" companies that claim to buy home appliances from their customers and then lease them back for a "rental fee," as well as "fast cash" advertisement companies and catalogue sales companies, which "sell" catalogue certificates to customers who need quick cash. Some lenders simply advertised "cash back on your check."¹



Another variation on the theme is the "cash leasing" method, where, at rates in the range of 780% APR, companies claim they are "leasing," not loaning funds. Under this scenario, money is leased at the cost of 30% of the amount loaned per 15 days. Clients must have an active checking account and verify ownership of at least three electronic items, such as stereo, computer, or television, in order to borrow up to \$300, according to a Washington, D.C., area survey conducted by a Georgetown University professor.²

Check cashers, especially those located in states with usury or small loan caps, seek to disguise the true nature of the payday loan transaction by claiming that it is a "deferred presentment" of a check for deposit. The aim is to avoid enforcement of laws that limit interest charged for loans, require comparable cost disclosures, and provide consumer protections.

COURT DETERMINATIONS

State and federal court decisions have concluded that payday loans are subject to state usury and small loan laws, and to federal credit laws, such as the Truth in Lending Act. The Kentucky Supreme Court, for example, recently ruled that all payday loans made in Kentucky prior to 1998 are illegal as disguised loans.³ The Kentucky court cited a venerable 1926 case which established that the existence of loan transactions should be assessed on considerations beyond mere form:

"With regard to lending transactions, courts are required to look beyond the form of a transaction to its substance, and they have laid it down as an inflexible rule that the mere form is immaterial, but that it is the substance which must be considered. No case is to be judged by what the parties appear to be or represent themselves to be doing, but by the transaction as disclosed from the whole evidence; and, if from that it is in substance a receiving or contracting for the receiving of usurious interest for a loan or forbearance of money the parties are subject to the statutory consequences, no matter what device they may have employed to conceal the true character of their dealings."⁴

Under decisions that treat substance as more critical than form, these transactions are loans despite their characterizations by the sellers as leases or as check-cashing transactions.

PAYDAY LENDING PRODUCES HIGH RETURNS AND GROWTH

In Tennessee, the Department of Financial Institutions reported to the General Assembly that licensees in the first nine months under Tennessee's Deferred Presentment Act earned spectacular profits. Not counting the two major lenders with sizable losses due to large class action lawsuit settlements, payday lenders in Tennessee had a return on assets of 22.72% and a return on equity of 30.37%.⁵ Stephens, Inc., a Little Rock, Arkansas investment firm, estimates that a typical payday advance store generates a 48% unleveraged return on investment, assuming a 40% tax rate.⁶

Some states that license payday lenders report industry size and volume of payday loan business data. Colorado reported a 16% increase in licensed lenders in 1998 (218 licensees) and a 40% increase in the number of loans and 56% increase in the dollar amount of loans for the year.⁷ Colorado consumers borrowed almost \$67 million in 1998, and paid an average 486% annual interest rate. Registered payday lenders in Indiana increased from 15 in 1994 to 115 with 454 outlets in 1998, with loan volume of almost \$300 million. Mississippi has issued approximately 625 payday loan licenses since 1998 but does not report financial information on licensees. Ohio had 450 licensed check lenders as of early 1999. In Wisconsin, licensed payday loan institutions went from 17 in 1995 to 183 in early 1999. About 1,600 payday lenders have opened in California in the two years since the California legislature made the business legal. News reports indicated that the payday loan industry in California served 750,000 customers monthly with annual business of \$114 million in that period.⁸

THE BATTLE FOR CARVE-OUTS AND PROTECTION IN THE STATES

Through "carve-out" legislation, four states essentially authorized payday loans in 1999, adding two new states to the 22 states that previously had done so. As of November 1, 1999, the 24 states with specific payday loan laws or regulations that permit payday loans, include:

| | |
|----------------------|------------------------|
| Arkansas | Montana |
| California | Nebraska |
| Colorado | Nevada |
| Florida ⁹ | North Carolina |
| Hawaii | Ohio |
| Iowa | Oklahoma ¹⁰ |
| Kansas | South Carolina |
| Kentucky | Tennessee |
| Louisiana | Utah |
| Minnesota | Washington |
| Mississippi | Wyoming |
| Missouri | District of Columbia |

Legislation enacted in 1999 authorized payday loans in Arkansas and Hawaii, states where small loan interest rate caps had prevented these loans. Montana and Utah, states with no usury caps, also carved out payday loans from other small loans in new regulatory legislation. It should be noted, however, that while the Montana legislature set the highest fee cap in any state payday loan law, it did include significant other consumer protections based on the Consumer Federation of America and the National Consumer Law Center model deferred deposit loan act.¹¹ Mississippi, Nevada, and Louisiana amended their existing payday loan laws in 1999 to either tighten consumer protections or slightly reduce maximum fees. In Louisiana, California, and Kansas, bills based on the model payday loan law offered by consumer groups were introduced, but not enacted. The payday loan industry failed to win legislation in Florida to permit payday lending as carried out in other states. A Wyoming bill to authorize a 100% bad check penalty was defeated.¹²

Nineteen states and two territories currently have laws that limit interest rates for

small loans. States that prohibit payday loans due to small loan interest rate caps, usury law, and/or specific prohibitions for check cashers include:

| | |
|------------------------|----------------|
| Alabama ¹³ | New York |
| Alaska | North Dakota |
| Arizona | Pennsylvania |
| Connecticut | Puerto Rico |
| Georgia | Rhode Island |
| Indiana | Texas |
| Maine | Vermont |
| Maryland | Virginia |
| Massachusetts | Virgin Islands |
| Michigan ¹⁴ | West Virginia |
| New Jersey | |

Industry-backed legislation to make payday loans legal failed to become law in 1999 in Arizona, Texas, Alabama, Georgia, and Virginia, all of which currently prohibit payday loans through small loan and/or usury laws and/or check casher registration laws. In New York, the State Banking Department issued a letter June 29, 1999, stating that loans advanced resulting in an annual interest rate in excess of 25% violates New York's State Penal Code § 190.40.¹⁵ The New York Banking Department also took the position that any and all charges to the borrower to obtain a loan are interest and are subject to the 25% usury limitation. In New Jersey, a criminal usury limit of 30% applies to small loans.¹⁶ Both New York and New Jersey laws prohibit check cashers from making loans of any kind.¹⁷

The maximum legal cost of payday loans in states where these loans are authorized by state law range from \$15 to \$33.50 to borrow \$100 for 14 days. Utah and Nevada permit payday loans with no limit on fees. Some states set fees based on a maximum percentage of the face value of the total check, including cash advanced and the fee, while 13 states impose the percentage fee on the proceeds of the loan.¹⁸ A few states set a sliding scale of fees, depending on the size of the loan. Although fees have a variety of names, under the federal Truth in Lending Act, all costs of extending credit must be dis-

closed as a dollar finance charge and as an annual percentage rate. The annual percentage rate is the cost of credit at a yearly rate, which permits consumers to compare the cost of borrowing money from a variety of sources such as small loans, pawns, payday loans, or credit card cash advances. As permitted by state laws, the maximum effective annual percentage rate for a \$100 payday loan for the typical term of 14 days ranges from 390% to 871%.¹⁹ Apart from states that have either affirmatively authorized payday loans or effectively prohibited them, seven states currently permit payday lending because those states have no small loan rate caps or usury limits: Delaware, Idaho, Illinois, New Hampshire, New Mexico, Oregon, South Dakota, and Wisconsin. As long as lenders comply with state lender licensing provisions, in those states they are able to charge triple-digit interest rates typical of payday loans. Legislation impacting payday loans was introduced in most of these states both by advocates of greater regulation and by the industry. In Indiana competing bills backed by the payday loan industry or by state regulators failed to pass, leaving Indiana's \$33 minimum finance charge in place.

The success of consumer protection activists in several states suggests that in the absence of inhibitory federalization, further successes can be anticipated in coming years.

ROLE OF NATIONAL BANKS AND THRIFTS

Payday lenders have recently partnered with banks to evade state laws that have limited the effective rates of interest they may charge. Thus, partnerships between banks and companies in the fringe banking market are a growing trend in the payday loan field. As an investment advisor newsletter to the industry notes, "We see a trend afoot to utilize some sort of national bank charter lending program to permit the product in states that are unwilling to act on legislation to allow the product."²⁰

The legal theory underlying the use of national banks to make payday loans is "exportation." As currently interpreted, a 1978 Supreme Court decision is being used

to argue that banks with certain kinds of privileged charters are able to ignore the usury laws in the borrower's home state. By chartering the bank in a deregulated state, the bank claims the right to export its home state's lack of regulation all across the country irrespective of whether their practices would be illegal for payday lenders in the borrower's home state.

Comments filed with the Treasury Department by the Consumer Federation of America and the National Consumer Law Center in an Advance Notice of Proposed Rulemaking proceeding indicated that banks are partnering with check cashers, pawnshops, and other fringe bankers to provide "voluntary" EFT '99 accounts through which the federal government can electronically distribute federal benefits to recipients. An informal survey of accounts across the country noted that these entities were expecting to make payday loans to federal recipients, secured by anticipated deposit of Social Security checks and other benefits.²¹

POLICY RECOMMENDATIONS

This author helped to develop, and so naturally supports, the recommendations made by the Consumer Federation of America, which urge Congress to close the national bank exportation loophole. Federal legislation, in this view, is needed to prevent the use of national bank and thrift charters to evade state small loan rate caps and usury laws, which were enacted only after long and intensive debates at the state level. One approach would be to simply prohibit loans based on personal checks made by banks. As CFA told the Subcommittee on Financial Institutions and Consumer Credit, banks should not be in the business of profiteering from desperate borrowers by enticing consumers to write bad checks to borrow money at exorbitant rates. Legislation that prohibits banks from making loans based on personal checks or electronic withdrawals from accounts would close the national bank loophole.²²

Another viable approach would set limits on bank payday loan rates and require banks

to comply with the laws of the state where the consumer receives the proceeds of the loan. Representative Bobby Rush (D, IL) introduced H.R. 1684, the "Payday Borrower Protection Act of 1999" to provide minimum standards for state payday loan laws and to close the federal bank charter loophole. Under the terms of the bill, states would retain the right to enforce small loan rate caps and usury laws that prohibit payday lending. The Federal Reserve would be required to certify that state payday loan laws meet the minimum consumer protection standards contained in the legislation. Banks would be limited to 36% interest rates on payday loans and be required to comply with the payday loan law of the state in which the borrower is located, not the state where the bank is domiciled.

The author and CFA recommend that states with no usury or interest rate caps enact legislation to put limits on the cost of payday loans. This recommendation flows from the understanding of consumer professionals that the rates charged reflect a dramatic imbalance of knowledge and power in the marketplace. Consumers who are desperate enough for credit to pay triple-digit interest rates for two-week loans have little market power to bring rates down. The real cost of payday loans made in small sums for very short periods of time may not be clear to unsophisticated consumers. When lenders deny that their cash advances are "loans" and fail to comply with Truth in Lending Act disclosures of Annual Percentage Rates, consumers do not have the key price tag needed to comparison shop for credit. If, as the industry claims, payday loan customers have no where else to go for small loans, rate regulation is necessary to prevent abuse of a captive market.

States that have not granted payday lenders safe harbor from interest rate caps or usury laws should resist industry pressure to legalize payday lending. States should enforce small loan laws against payday lenders and companies that use "sale-lease-back," "catalogue sales," and other schemes in an effort to obscure usurious loan transac-

tions.²³ At a minimum, state lawmakers should reform existing payday loan laws with the lower maximum rates and comprehensive consumer protections in the CFA/NCLC model bill.²⁴ In particular, fees should be based on the proceeds of the loan, not the face value of the check.

Those lenders who are profiting from these transactions can be expected to develop new techniques that attempt to skirt the reach of these laws. Loan "roll-over" and "hot checks" abuses, for example, have been growing. To address these and other problems, creative and effective responses from consumer policy makers will continue to be essential.

APPENDIX B

Terms of State Small Loan/ Usury Law/ Check Casher Law

| State | Maximum Interest Rate | Check Casher Law Bans Loans |
|------------------------|-----------------------|-----------------------------|
| Alabama ²⁵ | 36% | |
| Alaska | 36% | |
| Arizona | 36% | |
| Connecticut | 28.52% | Yes |
| Georgia | 57.68% | Yes |
| Maine | 30% ²⁶ | Yes |
| Maryland | 33% | |
| Massachusetts | 39.86% | Yes |
| Michigan ²⁷ | 25% | |
| New Hampshire | 24% | |
| New Jersey | 30% | Yes |
| New York | 25% | Yes |
| North Dakota | 30% | |
| Pennsylvania | 23.75% | Yes |
| Puerto Rico | 25% | |
| Rhode Island | 36% | |
| Texas | 31.65% | |
| Vermont | 24% | |
| Virginia | 36% | Yes |
| Virgin Islands | 26% | |
| West Virginia | 31% | Yes |

¹ Consumers Union, "Wolf in Sheep's Clothing: Payday Loans Disguise Illegal Lending," Austin, Texas, February 1999.

² Manning, Robert, "Poverty, Race, and the Two-Tiered Financial Services System," *Poverty & Race*, July/August 1999.

³ *White v. Check Holders, Inc.*, 1999 WL 401919 (Ky., June 17, 1999).

⁴ *Hurt v. Crystal Ice & Cold Storage Co.*, 286 S. W. 1055, 1056-57 (Ky. 1926)

⁷ Report to the 101 General Assembly on the Deferred Presentment Services Act T. C. A. § 45-17-101, et seq., Tennessee Department of Financial Institutions, 1999, p. 9.

⁸ Stephens, Inc., "The Emerging Business of Deferred Presentment," Little Rock, Ark., 1999, p. 5.

⁹ State of Colorado Department of Law, "1998 Post-Dated Check Cashers Supervised Lenders' Annual Report."

¹⁰ Tracey Correa, "Payday Lenders Come Under Fire; Lawmakers Propose Limits on the Popular, Profitable Companies," *The Fresno Bee*, April 18, 1999.

¹¹ Florida money transmitter regulations permit cashing post-dated checks at the same fee as cashing personal checks for one-time only. Roll-overs or extensions of loans violate Florida usury and/or consumer finance act.

¹² Oklahoma permits loans of under \$101.97 as single-pay one-month loans. Any loans for \$102 or more have a minimum term of 60 days.

¹³ See CFA and NCLC model Deferred Deposit Loan Act.

¹⁴ Wyoming SF0062 to make debtors whose checks bounce liable for the amount of the check and court costs and, if the contract provides, liable for an additional amount equal to the amount of the check as liquidated damages.

¹⁵ Payday loans currently permitted under terms of court injunction in litigation pending.

¹⁶ Michigan Financial Institutions Bureau has stated that companies are not required to be licensed under the Regulatory Loan Act if they charge no more than 5% per annum interest plus the check casher's fee for cashing personal checks. Check cashing rates are not regulated in Michigan.

¹⁷ State Banking Department issued a letter June 29, 1999.

¹⁸ New Jersey: Criminal usury cap NJS 2-C: 21-19.

¹⁹ See Appendix for terms of state small loan caps.

²⁰ A maximum 15% fee costs customers in the "total check" states \$17.65 per \$100, while in the "amount loaned" states the 15% fee is \$15 per \$100 borrowed. A \$100 payday loan costs \$22 in Mississippi, a state that caps fees at 18% of the face value of the check. (18% of \$122 = \$21.96 fee per \$100 principal.)

²¹ The same \$100 loan payable in seven days has double the APR of the 14-day example.

²² Stephens, Inc. "The Emerging Business of Deferred Presentment," April 1, 1999, p. 6.

²³ Comments to the Treasury on ANPRM 31 C. F. R. Chapter II RIN 15055- AA74, National Consumer Law Center, Consumer Federation of America, et. al. April 1999.

²⁴ Testimony of Jean Ann Fox, before the Subcommittee on Financial Institutions and Consumer Credit, H.R. 1584 "Depository Institution Regulatory Streamlining Act of 1999," May 12, 1999.

²⁵ Last year the National Consumer Law Center and CFA provided a model state bill to state regulators and interested groups and legislators for use in states where payday lending is already permitted.

²⁶ CFA/NCLC Model State Deferred Deposit Loan Act available from CFA, 1424 16th Street NW, Suite 604, Washington, DC 20036.

²⁷ Payday loans currently permitted under terms of court injunction in litigation pending between Alabama Banking Department and check casher trade group. Legislation to authorize payday lending failed at the 1999 session of the Alabama legislature.

²⁸ Maine Supervised Loan Act sets a minimum finance charge for loans under \$75 at \$5, loans from \$75 to \$250 at \$7.50, and loans over \$250 at \$25. A \$100 two-week payday loan would cost 195%.

²⁹ Michigan Financial Institutions Bureau has stated that companies are not required to be licensed under the Regulatory Loan Act if they charge no more than 5% per annum interest plus the check casher's fee for cashing personal checks. Check cashing rates are not regulated in Michigan.



Consumer Movements in Newly Industrialized Countries: Taiwan as a Case Study

Sue L.T. McGregor

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As Asian economies continue to change at an accelerating pace, interest and concern for consumer welfare will escalate as well. And even though consumerism is still predominately a Western phenomenon (Joy and Wallendorf, 1996), it is emerging as a major topic of concern in developing countries (Darley and Johnson, 1993; Thorelli, 1988). In the Asia-Pacific region, there has been a recent upsurge of concern by governments, nongovernment organizations, and researchers about the consumer interest, consumer rights, and consumer protection (Ho, 1997; Hsieh and Scammon, 1993; Joo, 1997; Rhee and Lee, 1995; Widdows et al., 1995; Wood, 1991; Xiao et al., 1994). Gundlach and Wilkie (1990) concur that consumerism, consumer movement, interests, protection, and rights are interrelated, since these concepts relate generally to the relationship between consumers, business, and government, the major players in the consumer movement (Mayer, 1989).

The focus of this paper is the evolution of a consumer society in the newly industrialized countries of Asia (NICs), especially Taiwan, a nation that is on the verge of

entering what some students of industrialization have considered to be the last stage of a five-stage process of industrialization, that is, entering a mass-consumption society.¹ Efforts to categorize or analogize should be critically examined. Researchers are cautioned not to assume that all Third World countries will exhibit similar patterns of consumer behavior, let alone parallel the patterns of developed countries (Costa, 1996; Darley and Johnson, 1993; Thorelli, 1988). Concern for such a reality in the Third World prompted this discussion about Taiwan, a country that is simultaneously a Less Developed Country (LDC) and a Newly Industrialized Country (NIC). In only two decades, Taiwan experienced a rapid, dramatic, and successful transition from a planned economy to an export-led industrialized market economy and modern industrialized society (Hsieh and Scammon, 1993, 1997; Mehmet, 1995).

Hsieh and Scammon (1993) discuss consumer concerns in Taiwan and note that Taiwan has emerged as a NIC, but that is as far as they take the idea. Despite its status, it is still considered a developing country in many respects (Evans, 1994). This incongruity raises the question: To what extent

does becoming a NIC affect consumer movements and consumer welfare in countries that continue in many respects to be LDCs? Joy and Wallendorf (1996) confirm that new research questions need to be developed and theoretical perspectives need to be examined as we study the mechanisms by which a consumer culture is emerging and being expressed in developing countries, especially those moving toward a mass-consumption society. Hopefully, this inquiry will help reveal the changing profile of marketplace constituents; contribute to the discussion of the place of consumer education in the socialization of consumers; position the actors in the international setting; relate evolving consumer rights with human rights; and profile the emerging consumer movement.

THE GROWING CONSUMER PRESENCE IN TAIWAN'S ECONOMY

Taiwan, recognized as one of the wealthiest and most industrialized nations in Asia is, along with Singapore, Hong Kong, and South Korea, one of the "Little Tigers of Asia."² Taiwan is one of the NICs that helped to establish the Asia-Pacific as a region of surging, phenomenal economic growth, continuing into the 21st century (Ting, 1982; Delios, 1999). In 1994, Taiwan was listed as the 14th largest trading partner in the world and was recognized as one of the wealthiest and most industrialized nations in Asia. Taiwan moved from an agricultural economy and an economy that produced easy-to-make, labor-intensive products to high-value electronic industries and small businesses that can shift gears rapidly in response to changing world and economic conditions, thus giving Taiwan a competitive edge relative to other Asian economies (Naisbitt and Aburdene, 1990). Taiwan, with a population of 22 million (Francis, 1998), has one of the highest population densities in the world, 1,470 people per square mile (Williams, 1994b). Such a dense population translates to millions of consumers interacting in the Taiwanese marketplace in an economy that has witnessed a phenomenal growth in

its Gross National Production. GNP was slated to increase by 5.1% in 1998 and 5.4% in 1999 (Francis, 1998). As a point of reference, an annual 3% growth in GNP is considered excellent. Taiwan has no national debt and, as of 1999, has "staggering foreign reserves of \$85 billion (US), third highest in the world" (Francis).

Economic growth in Taiwan has led to a marked increase in the standard of living of Taiwanese consumers and an increased availability of new and different imported goods (Hsieh and Scammon, 1993). At \$13,000 US (24th highest in the world), Taiwan has the fourth highest per capita income in East Asia, with a quality of life that is fast approaching other developed nations (Bercuson, 1995; Francis, 1988; Mehmet, 1995). Most of the citizens now live in cities and towns (75%) and work in industry or service occupations (Williams, 1994b) rather than in agriculture. In other developing economies, as many as 80% of the population still work in agriculture (World Bank, 1995). Unemployment in Taiwan is only 2.4%, and almost all enterprises are medium sized. Taxes are only 25% of income (Francis).

EVOLVING FAMILY AND SOCIAL STRUCTURE IN TAIWAN

"As the [Taiwanese] economy continues to change and as people seek increased quality of life, consumer problems are likely to become even more complicated and [prominent]" (Hsieh and Scammon, 1993). The generation and resolution of marketplace problems is complicated by the evolving but traditionally rooted family and social structure as well as the economic structure. Taiwan is a male-dominated society (especially single retired military men), with 75% of elder men living in a son's home with his family. Economic choices are made collectively, are kinship based, and are embedded in social and moral interaction. There is a growing trend, however, for children to leave home sooner and for married couples to not share homes with their parents, countering a centuries old tradition of the extended family

caring for members from cradle to grave (Chi, 1991).

These and similar changes will affect consumer decisions made in the home and in the marketplace, which in turn will impact the consumer movement in Taiwan. Changes in the marketplace reflect the evolving nature of consumers, their daily living context and resultant needs. Consumer affairs professionals need to pay heightened attention to the market failures encountered as consumers strive to meet new needs and new wants by purchasing goods and services. Future researchers should be encouraged to continue to profile the consumer situation in Taiwan's evolving consumer society.

CONSUMER MOVEMENT EFFORTS IN NEWLY INDUSTRIALIZED COUNTRIES

Consumer movement efforts are traditionally comprised of the collective efforts of consumer, government, or independent organizations to represent and protect the consumers' interest relative to that of sellers. Although these efforts have received much attention in the academic literature during the last 30 years, the focus has been primarily on more developed countries, where consumer protection rules have become elaborate. The consumer interest in developing countries, however, is not well articulated (Darley and Johnson, 1993), not even in Taiwan (Hsieh and Scammon, 1993), a NIC. Since NICs are often characterized as economies that have developed quickly, with no assurances that all marketplace players have progressed at the same rate (Hsieh and Scammon), it is important to examine the extent of consumer reform efforts in NICs and to determine the degree of protection, education, organization, and emancipation of consumers relative to business.

Ironically, consumer movement efforts cannot develop until consumers believe problems exist in the marketplace (Kaynak, 1985). The consumer movement in Taiwan has been slow to develop (Hsieh and Scammon, 1993). According to Hsieh and Scammon, four unique factors have shaped

the consumer movement in Taiwan: (a) the adherence to traditional Confucian values and the impact on consumer behavior and attitudes, (b) the fact that the Taiwanese are taught to learn and adapt rather than to effect change, (c) the fact that Western culture has not had as much influence on Taiwanese consumers as would be expected, and (d) the fact that the Taiwanese government seems to place business and industry interests before the consumer's interest. The consumer movement literature suggests that countries can be located on a consumerism life cycle continuum based on the extent of consumer organization, government supportive infrastructure, business and industry consumer-oriented infrastructure, and consumer education programs, among others (Darley and Johnson, 1993). An integrated model of the consumer movement life cycle is presented in Figure 1 as a possible tool for developing a profile of consumerism in Taiwan and other NICs. It refines the conventional theoretical framework for the consumer movement life cycle by integrating the conventional approach with models developed to explain product life cycles and social movement life cycles, drawing from a collection of scholars (Barker, 1987; Bloom and Smith, 1986; Box, 1984; Darley and Johnson, 1993; Fazal, 1983; Forbes, 1987; Herrmann, 1970; Herrmann and Warland, 1980; Hornsby-Smith, 1986; Kaynak, 1985; Kotler, 1972; Kroll and Stampfl, 1981; Mauss,



1975; McLaughlin, 1969; Straver, 1977).

The models that are used to study consumer movement efforts in developing and NIC economies need to be flexible enough to accommodate anomalies in the consumer movement life cycle of these countries, and to reject the presumption that the process fits the conventional Western model (Costa, 1996; Joy and Wallendorf, 1996; Thorelli, 1988). For example, the stages may differ from existing conventions (see next paragraph and Figure 1), the time span for conventional stages may differ, or some of the conventional stages may be skipped, occur in a different sequence, or even occur simultaneously, since many of these countries have to convert from a planned economy to market economy. The literature about the consumer movement in developing countries and their adherence to the conventional consumer movement stages is itself "underdeveloped." Thorelli (1990) and Polepole (1998) found

the movement is weak. Insights may be gleaned from a body of literature which documents the existence of a pattern of evolution for social movements, of which consumer reform is one.

By standard Western theoretical conventions, there are four conventional phases to a consumer movement: crusading, popular movement, organizational/managerial, and bureaucratic. Assuming that a similar life cycle can be imposed on developing countries, theorists expect developing countries to fall within the conventional phases one and two (Darley and Johnson, 1993). Phase one involves a growing concern for consumer problems in conjunction with increased provision of information to consumers, sensitizing others to the necessity of a movement and spotty but fundamental legislative efforts. There is also a gradual formation of local and national ad hoc alliances and organizations, and a building of momentum.

FIGURE 1
AN INTEGRATED CONSUMER MOVEMENT LIFE CYCLE AS IT COULD BE APPLIED TO TAIWAN

(adapted from McGregor, 1997)

| Time frames | Consumer social movement stages | Conventional consumer movement life cycle stages | Product life cycle stages | Major concerns or themes |
|---|---|--|---|--|
| To be determined through research in Taiwan | Phase one: Incipency | Phase one: Crusading (very long period) | Introduction | Concern for consumer problems grow; provision of INFORMATION to consumers; sensitizing others for necessity of movement; spotty but fundamental legislative efforts |
| | Phase two: Coalescence | | | GRADUAL FORMATION of local and national adhoc alliances and organizations; building momentum |
| | Phase three: Institutionalization | Phase two: Popular movement (shorter, intense burst) | Rapid growth | Rapid formation of nationwide government infrastructures and legislative consumer PROTECTION frameworks; strengthening of consumer organizations; rapid momentum |
| | Phase four: Fragmentation | Phase three: Organizational/managerial (lengthy period) | Maturity (strong presence but in changing context; need to manage what is in place) | MAINTENANCE, justification, defense and evaluation of existing consumer protection framework within a changing context; momentum is slowing in conjunction with competition from other fronts; some argue that the movement is victim of its own success |
| | Phase five: Demise: 1. abortive 2. revival, or 3. overlapping | Phase four: Bureaucratic/participatory (unknown time line) | Decline of original momentum with selective interest in | Re-regulation or deregulation with more market constituent PARTICIPATION and responsibilities (partnerships); movement trying to achieve revised goals using different combination of resources |

During phase two, there is formation of nationwide government infrastructures and legislative consumer protection frameworks, a strengthening of consumer organizations, and rapid momentum (see Figure 1). How does the development of the Taiwanese consumer movement fit into this template? Evidence in the next section suggests that Taiwan is still in transition from the conventional phases of two and three; the consumer movement is coalescing and a legislative framework is beginning to emerge. It remains for further research to determine whether Taiwan's consumer movement fits the profile of a developing economy, a developed economy, or into a different profile entirely, given its unique status as an NIC with such relative wealth, literacy, quality of life, and standard of living. Indeed, Hsieh and Scammon claim that "as a newly industrialized country, Taiwan has followed a somewhat different route in the development of consumer protection" (1993). Thorelli (1988) suggests that NICs are more like LDCs than developed economies.

UNDERSTANDING TAIWAN'S EMERGING CONSUMER POLICY FRAMEWORK

The marketplace in Third World countries is usually a seller's haven, with little or no consumer protection, education, or information (Darley and Johnson, 1993; Maynes, 1988). Hsieh and Scammon (1993) note that "economic prosperity does not necessarily mean that consumer welfare has increased or that consumers' basic rights are being protected . . . [Many] concerns [are] now surfacing in Taiwan regarding consumer protection." In fact, they note specifically that "serious consumer protection problems have become increasingly evident since 1980 [the inception of the Taiwanese consumer movement]."

There is, encouragingly, evidence in Hsieh and Scammon's (1993) discussion that a collection of consumer policies is beginning to take shape that could be construed as the beginning of a consumer policy framework. They refer to a Fair Trade Committee, a Tourism Bureau, a Bureau of Environmental Protection, and a Department of Commercial

Affairs. Taiwan established a Fair Trade Law in 1991 and a Consumer Protection Law in January 1994, which was designed to "protect the consumer interest, enhance consumer safety, and enhance consumer's standard of living." One of the provisions of the latter legislation is to confer official recognition and government commissions to the Consumer Protection Union, established in 1980. Another major innovation was the provision to establish consumer protection units within the government system (Hsieh and Scammon, 1993; Xiao et al., 1994). The consumer government office was approved only a few years ago (Xiao et al.) and Hilary Tso believes that it is not yet implemented (personal communication, May 15, 1995). The Legislative Yuan, Taiwan's version of the U.S. Congress and Canada's Parliament, has seemed "to be paying lip service to [consumer protection issues]" but "has only recently enacted comprehensive laws that are designed to protect consumers" (Hsieh and Scammon, 1993).

Consideration of these developments suggests an agenda for research by students of consumer movements in Asia and the West. They should be paying greater attention to Taiwan's evolving consumer protection framework. They should be profiling the legal statutes, regulations, and institutions that describe and ensure the rights and marketplace protection afforded to Taiwanese consumers. "[Taiwanese] consumerism may stagnate when efforts for reform . . . do not include legislative action and judicial review" (Hsieh and Scammon, 1993). As Hsieh and Scammon note, the Taiwanese government seems to place economic development and business and industry interests before the consumers' interest. What strategies and what roles are the Taiwanese government assuming as a consumer affairs agent, and how is its stance reflected in its choice of policy instruments to ensure the consumers' interest? What weight is placed on a compliance philosophy versus an intervention mode; on free market versus paternalism? Does the government see itself as rule maker and referee or as a facilitator and an advo-

cate for consumers? What principles shape its approach to intervening in the market? These research questions could be addressed, for example, by analyzing the established "policy intelligence system" in Taiwan gathered using McGregor's (1996) consumer policy taxonomy. That approach involves the collection of data and critique of policy information about six topics: the character of government office; the character of marketplace constituents and consumer issues; the character of policy environment and context; the rationale for intervention; the roles and strategies of government intervention; and the methods and instruments for policy implementation.

CONNECTING CONSUMER RIGHTS AND HUMAN RIGHTS IN TAIWAN

McGregor (1998) and McGregor and Greenfield (1995, 1996) suggest that most consumer rights inherently assume the basic human rights adopted by the United Nations in 1948 ("Universal declaration of human rights," 1997). Up until 1987, Taiwan was under martial law, and many basic rights were suspended by the government. After Lee Teng-hui became president in 1988, a new era of democratic freedoms began, including growing freedom of speech and

other human rights (Williams, 1994b). Given the apparent simultaneous evolution of democratic freedoms and the consumer rights movement, it would be interesting to examine the existence of a possible link between Taiwanese human rights and their consumer rights. After all, consumer welfare demands that human rights and market rights be rectified (Kerton and Ahonen, 1990).

The multi-party system that is taking root in Taiwan paves the way for a model of peaceful transition from an authoritarian rule to democracy. A fourth recommendation is to begin to address the relationship between consumer and human rights given that "with political openness since 1988, citizens in Taiwan are arguing for their individual rights more eagerly" (Hsieh and Scammon, 1993). Hsieh and Scammon suggest that Taiwanese students returning from study in American universities are bringing new ideas about consumer rights with them. These new understandings may well be a strong influence on Taiwan's consumer concerns. Increasing demand for human rights and political freedom in Taiwan (Mehmet, 1995) poses interesting research questions about consumer rights, especially when one considers that the Taiwanese are "only slowly beginning to voice their . . . experiences as consumers . . . and few can be characterized as consumer 'activists'" (Hsieh and Scammon), although "advancing the consumers' position in society has become more popular politically." Hsieh (1997) continues to research the Taiwanese consumers' propensity to voice complaints in the marketplace, an exercise of their consumer rights.

IMPROVING CONSUMER EDUCATION IN TAIWAN

A foundation for the exercise of consumer rights is consumer education. There seems to be a general predisposition for education in Taiwan. Improvement in education has been a major factor in Taiwan's recent economic success. The educational system is among the best in the world in terms of number served, levels of literacy (92%), and the number of people who go to universities (30%)



(Naisbitt and Aburdene, 1990; Williams, 1994b). But are citizens socialized in their role as consumers? It seems that socialization may be a consumer issue, since Hilary Tso clarifies that consumer education is not an integral component of the curriculum (personal communication, May 15, 1995). A fifth compelling research question is the extent to which consumer education is a part, or an intended part, of the public school or university curricula. How important is it that citizens be formally socialized into their role as consumers, given the dramatic transformation from a "once largely backward economy into a financial and economic powerhouse in Asia" (Bercuson, 1995, 21)? Westernization can be seen vividly in large Taiwanese cities, where Western cultural tastes are changing the way people live, consume, and work (Williams, 1994a). Conversely, in 1993, Hsieh and Scammon note that Western culture has not been as great an influence on Taiwanese consumers as would be expected. How will the Western consumer socialization process affect the Taiwanese marketplace and the consumer interest?

A related question is the role that Confucianism plays, or will play, in the movement to bring consumer education to the Taiwanese public. To reiterate, Hsieh and Scammon (1993) note that Taiwan's consumer movement has been slow to develop due to its adherence to traditional Confucian values. Confucianism is an elaborate system of interpersonal obligations prescribed by Confucius. This philosophy places an emphasis on family and respect for the teachings of elders, both of which contribute to patterns of human behavior in a social, ethical system. Confucianism is a viewpoint that has shaped their lives for over 2,000 years, emphasizing harmonization, moderation, extreme respect, thriftiness, freedom, self-control, adaptability, simplicity, mysticism, and naturalness ("Confucius" 1994; Williams, 1994a). To embrace the Confucian philosophy, Van Roo (1989) notes that Taiwanese society embodies a clearly organized system of shared symbols and rituals deeply rooted in history, rituals that carry

over to market transactions. Will consumer education curricula need to embrace a combination of market theory and Confucianism? Will continued adherence to Confucianism (Hsieh and Scammon) affect the pace and nature, even the reality, of the institutionalization of consumer education programs in the public school and university curricula and perhaps in informal education venues such as continuing and adult education?

THE IMPACT OF INTERNATIONAL ORGANIZATIONS ON THE CONSUMER MOVEMENT IN TAIWAN

Governments are under increasing pressure from Consumers International (CI), formerly the International Organization of Consumer Unions (IOCU), to protect the interests of Asian-Pacific consumers (Wood, 1991). The mission of CI is to protect and promote the consumers' interest worldwide, especially the poor, the marginalized, and the disadvantaged. The most vocal and productive Taiwanese consumer association, the Consumers' Foundation, has been a full member of CI since 1992. The relationship between the Taiwan Consumers' Foundation, other consumer organizations, and the CI Regional Office of Asia/Pacific (ROAP) should be examined further to determine the impact of CI initiatives on the consumer effort in Taiwan.

Developments at the United Nations also have affected consumer reform in Taiwan. In 1995, the United Nations celebrated the 10th anniversary of the establishment of its Consumer Protection Guidelines, designed to provide direction for developing countries attempting to incorporate consumer rights. Organized around eight consumer rights (McGregor, 1998), the guidelines have become the cornerstone of CI's initiatives, especially in LDCs (Asher, 1997). The nationalist Republic of China (Taiwan's government) was expelled from the UN Assembly in 1971, when the People's Republic of China was recognized and seated (Williams, 1994b). Does the Taiwan nationalist government respect the UN Consumer Protection Guidelines given its aspiration to

become a member of the UN? How, if at all, is its position on this issue impacting the momentum and focus of the Taiwanese consumer movement? How does the drive for Taiwan to become a member of the United Nations, the World Bank, the International Monetary Fund, and the World Trade Organization (Bercuson, 1995; Mehmet, 1995) affect the consumer interest? What impact will the achievement of Taiwan as a regional operations center for North American transnational corporations and the resultant transportation, telecommunications, media, and financial centers (Mehmet) have on the standard of living, economic well-being, and marketplace problems of Taiwanese consumers? These questions suggest productive avenues of investigation for future students of consumer reform in newly industrialized countries.

SUMMARY AND CONCLUSIONS

Taiwan manifests signs of a consumer movement that is slowly gaining momentum. As Taiwan moves toward a mass-consumption society, further study by consumer affairs professionals can contribute greatly to advancing our understanding of Taiwanese consumer welfare and the growth of a collective movement to enhance that welfare. Parallels between consumer movements in developed, developing countries and NICs should be drawn to help understand all of them better. Researchers are challenged to determine the position of the country in the life cycle of the consumer movement and what that implies. Scholars need to examine the presence and scope of government infrastructures and other interest group institutions who legitimize the consumer interest. The existence and character of the consumer protection framework needs to be investigated, as does the link between consumer and human rights, the effect of links with the international consumer, political, and trade arenas, the impact of the degree of integration of consumer education into the educational system, and the impact of Western socialization. The consumer movement framework in Figure 1 may serve as a

flexible guide to the analysis of consumer reform in Taiwan and other NICs, such that marketplace realities and the collection of partnerships can be appreciated and managed to their full potential. McGregor (1996) mentions that consumer policy taxonomy offers a valuable tool to inventory and chronicles the emerging consumer protection framework in Taiwan. (McGregor, 1996). Currently, the consumer interest in developing countries and in NICs is not yet well articulated. This discussion continues recent efforts to chronicle consumer reform efforts in Asian developing economies and NICs (Chi, 1991; Hsieh and Scammon, 1993, 1997; Widdows et al., 1995; Van Roo, 1989; Xiao et al., 1994). As Asian economies continue to change at an accelerating pace, interest and concern for consumer welfare will escalate as well.

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ENDNOTES

¹ The Asia-Pacific region can be described as comprised of "Third World" or Less Developed Countries, "LDCs," on one hand, and Newly Industrialized Countries (NICs) on the other. The key distinction between LDCs and NICs is their level of industrialization. Underdeveloped countries are first stage, traditional economies with only basic industries of agriculture and mining (Millard 1994). LDCs that have become newly industrialized have jumped rapidly (in a matter of a few decades) from a traditional economy, into a more complex one. These nations have skipped past the second and third stages of economic growth involving, respectively, technological innovation of agriculture, then growth of basic industries and infrastructure such as railroads and steel. In a NIC, industries are engaged in the fourth stage of technologically advanced production of goods and services either as (a) an inward-oriented, import substitution industry (ISI) economy or (b) an export-oriented industrial economy (Jenkins, 1991). NICs successfully manage to gain a significant penetration of the industrial markets of developed countries (Holland, 1987). The fifth stage of economic growth entails the emergence of a mass-consumption society in an economy that provides more consumer goods and enjoys a service and information economy, e.g., United States and Canada (Walt Rostow as cited in Millard, 1994).

² The author is aware of the Asian Flu financial crisis that emerged since this article was first drafted over a year ago and appreciates that the changing economic and political climate will impact any analysis undertaken by consumer researchers in the Asian economy. As well, there is no doubt that the recent earthquake in Taiwan will impact the economy in profound ways and, by extension, then, consumers of Taiwan.

Vulnerable Consumers in a Highly Developed Asian Economy: The Case of Japan

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Ever since Japan experienced a period of exceptionally strong economic growth in the 1960s, high production levels, mass consumption of goods, and an abundance of new products have characterized the Japanese marketplace. Despite Japan's relatively weak economy during the past decade, the enthusiasm of Japanese consumers for the latest consumer goods and services has not dampened appreciably.

Inadequate government oversight of the market, however, has made it difficult for consumers to make informed choices. Consequently, purchasing decisions are largely based on personal knowledge and experience. This minimalist approach to providing consumer protection has resulted in significant consumer problems, going back many years. The magnitude of these problems can be seen in the 1955 case of Morinaga's arsenic-contaminated milk, the 1960 case involving canned horse meat that was falsely labeled beef, thalidomide babies, and SMON (subacute myelo-optico-neuropathy) disease, and other injuries caused by tainted medical



products. As those troubles registered as serious social problems, the government together with other public institutions established various organizations to address them (Uchida, 1992). But consumer problems continue to multiply. What follows is a survey of the administrative system of consumer protection in Japan, and the present state of affairs for consumers.

THE LEGAL FRAMEWORK OF CONSUMER PROTECTION

The legal basis for the administration of consumer protection in Japan is the Fundamental Law of Consumer Protection, adopted in 1968. Its main features are presented in TABLE 1.

The Fundamental Law, unlike consumer protection laws in other Asian nations or in the United States and European nations, does not contain any provision establishing specific rights for consumers. It merely indicates that the administration and industries should protect the rights of consumers, which contrasts with the revised Consumer Protection Law of Korea (Kim & Hosokawa, 1993; Hosokawa, 1991a), the Consumer Rights Protection Law

of China (China Consumers' Association, 1995), and the Consumer Protection Law of Taiwan (Guo, 1993), all of which establish the fundamental rights of consumers. Nor does the Japanese Consumer Protection Law have penal provisions. Korean law, however, has penal provisions (Kim & Hosokawa, 1993); Chinese law contains a chapter about settling disputes and legal responsibility (China Consumers' Association, 1995); and Taiwanese law clearly states the penalties, exemplary injuries, and judicial costs for "illegitimate industries" (Guo, 1993).

In Japan, there are approximately 80 specific regulations and over 350 local public institutions of consumer protection established on the basis of this law. The maze of principal laws and regulations related to consumer problems in Japan is presented in Table 2. Table 3 shows the administrative systems related to these consumer problems.

As indicated in Table 2, the laws that relate to consumer protection are distributed among various agencies in the Japanese central government. The Anti-monopoly Law and the law on Unjustifiable Premiums and Misleading Representation in Japan fall under the jurisdiction of the Fair Trade Commission. The laws on Measures and Industrial Standards, Supervision of Electric Goods, and Safety Standards of Consumer Goods, and the regulations on Sales Quotas, the Door-to-Door Sales Act, and Gas and Electricity Standards are under the supervision of the Ministry of International Trade and Industry (MITI). The Japan Agricultural Standards (JAS) system is under the jurisdiction of the Ministry of Agriculture, Forestry, and Fisheries. The Food Sanitation Law, the Drugs, Cosmetics and Medical Instrument Act, and the Quality Indication Laws of Household Materials fall under the Health and Welfare Ministry's jurisdiction.

The consequence of this division is that many consumer purchases fall into the overlapping jurisdiction of different agencies. Transactions in foodstuffs must comply with the regulation of the JAS system, together with unjustifiable premiums and misleading representation regulations, as well as food

TABLE 1
THE FUNDAMENTAL LAW OF CONSUMER PROTECTION

| | |
|---|---|
| Chapter 1 (Art. 1-6) General provisions | The law's objectives National obligations The obligations of the regional public institutions Legal actions |
| Chapter 2 (Art. 7-15) Consumer protection policy | Injury prevention Accuracy in measures and weights Appropriate standards Appropriateness of display Ensuring open and free competition Enlightenment and education; reflecting opinions Preparing testing facilities Handling complaints |
| Chapter 3 (Art. 16-17) Administrative framework | Preparing necessary institutions and improvement in management Organizing consumer groups |
| Chapter 4 (Art. 18-19) Consumer Protection Council, etc. | Consumer Information Council Consumer Protection Council Consumer Information Council |
| Supplementary provisions | |

sanitation regulations. Sales of clothing must meet the requirements of the industrial standards law, regulations on the quality of household appliances, and other regulations that are under control of the MITI, the Fair Trade Commission, and the Health and Welfare Ministry, among others. This overlap in jurisdiction can cause the proper governing agency to fail to recognize its own administrative responsibility when a consumer problem arises. Thus, cooperation from a unified point of view is nearly impossible, leading to numerous problems (Haruyama, 1994; Ohmura, 1994; Shoda, 1972; Kimoto, 1986; Shimada 1993; Shimizu, 1994).

The law concerning door-to-door sales was implemented in 1976 because existing regulations did not effectively control these types of sales. The Japanese government is now considering enacting a Consumer Contract Law to protect consumers in the process of making contracts. However, generally speaking,

TABLE 2
PRINCIPAL CONSUMER PROTECTION-RELATED LAWS AND REGULATIONS

| | |
|---|--|
| Preventing Harm | The Drugs, Cosmetics, and Medical Instruments Act The Food Sanitation Law, The Electric Appliances Supervision Act The Gas Industry Law, The Product Liability Law The Consumer Products Law |
| Weights and measures accuracy | The Weights and Measures Law |
| Standardization and representation of goods | The Industrial Standards Law, Regulations on Standardization of Agricultural Products The Household Materials Quality Indication Laws The Act on Unjustifiable Premiums and Misleading Representation |
| Contract appropriateness | The Hire-Purchase Act, The Door-to-Door Sales Act |
| Fair competition | The Private Monopoly Prohibition Act and Maintenance of Fair Trade The Act on Unjustifiable Premiums and Misleading Representation The Investment Law, The Interest Restriction Act The Act on Unjustifiable Premiums and Misleading Representation |
| Consumer education and consumer organizations | The School Education Act, The Consumer Cooperative Act |

TABLE 3
CHIEF ADMINISTRATIVE SYSTEMS RELATING TO CONSUMER PROBLEMS

| | |
|---|---|
| Ministry of Health and Welfare | Safety of food, medicines and chemicals, Remedy of harm caused by medicines Information on food, medicines, and food additives, Supervision of barbershops and beauty parlors |
| Ministry of Agriculture, Forestry and Fisheries | Safety of agricultural chemicals and feed, Regulation of foreign futures dealing Consumer education, Agricultural standards, Consumer counseling |
| Ministry of International Trade and Industry | Safety of chemicals, electricity, and gas, Remedy of injuries due to defective merchandise Regulations regarding measures, Representation of household goods Regulation of installment selling and door-to-door sales, Regulation of foreign futures dealing Industrial standards, Consumer education, Consumer counseling |
| Ministry of Transport | Safety of cars, Regulation of travel trade |
| Ministry of Finance | Regulation of loan trade, Regulation of investments, Regulation of securities |
| Ministry of Education | Consumer education in schools, Lifelong education |
| Ministry of Justice | Regulation of interest, Regulation of investments |
| Ministry of Construction | Housing safety, Remedy for housing-related injuries, Regulation of housing trade |
| The Environment Agency | Safety of agricultural chemicals |
| The National Police Agency | Prohibition of pyramid investment schemes |
| The Economic Planning Agency | Prohibition of pyramid investment schemes, Support of consumer groups |

a law is enacted only after a specific social problem arises (Kimoto, 1989; Shimizu, 1993; Kai, 1996; Nagao, 1981). There are some, however, such as Sawano (1988), Takeuchi (1995), and Mura (1995), who believe that new laws are not needed and that efforts should be made to resolve the problems within the already existing legal framework.

CONSUMER ADMINISTRATION

An organizational chart of consumer administration is presented in Figure 1.

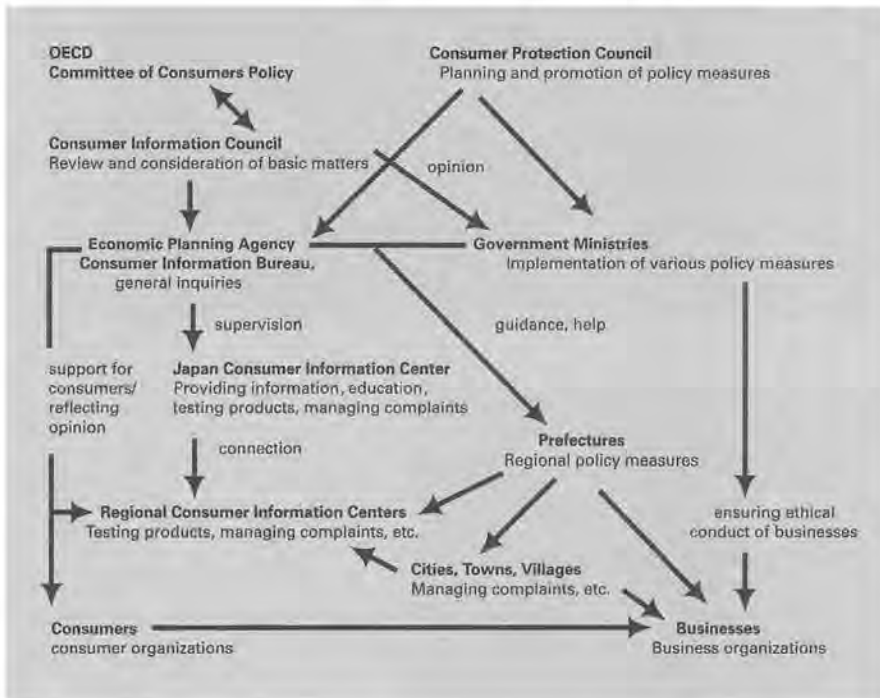


Figure 1. The organization of consumer administration in Japan. Data is quoted from *Consumer Handbook '99 (Consumer Information Office of Economic Planning Agency, 1999, p.13)*.

The Consumer Protection Council, the highest organ of consumer administration in Japan, promotes a general policy on consumer protection; it is part of the associate institutions of the Prime Minister's Office. The council is responsible for both general consumer protection policy as well as its specific measures. The Consumer Information Council is an "inquiry" institution within the Consumer Protection Council and includes consumer representatives. The Economic Planning Agency coordinates consumer protection measures with the overall government policies. MITI, the Ministry of Agriculture, Forestry, and Fisheries, and the Fair Trade Commission, each within its own jurisdic-

tion, controls and oversees producers, collects complaints from consumers, and performs other functions necessary for consumer protection.

All local governments are responsible for implementing the central government policy measures and have established consumer administration offices; they attempt to enforce their own consumer protection policies through those institutions and local ordinances. Though these institutions operate within their own territories, there tends to be no cooperative system among them.

CONSUMER CONSULTING SERVICES

Consumer consultation centers have been established with each of government ministries as well as local public institutions. At the center of the system is the Japan Consumer Information Center, which operates under the supervision of the Economic Planning Agency together with regional consumer information centers established by local public institutions.

1) The Japan Consumer Information Center (JCIC).

JCIC, which was established in 1970 in Tokyo in response to the Japan Consumer Information Center Act, manages consumer complaints, collects data, and oversees consumer education activities. This includes promoting consumer education, receiving information and managing consultations on injuries, examining and testing products, and study and training.

JCIC also operates the host computer for PIO-NET, the country's on-line consumer information network system, which connects regional consumer information centers established by local government with JCIC (Yoshida, 1993). As of 1998, there were 626,640 cases of consumer complaints and consultations reported by consumer information centers from all over the country (JCIC, 1999, p.148). To help compensate consumers for injuries, the data collected by the PIO-NET is categorized into groups of cases and groups of consumer lawsuits, and is also made available to the police for their

investigations. Consumer injuries that have the potential of becoming widespread are disclosed to the media to draw public attention and prevent further harm (JCIC, 1999, pp. 46).

2) Regional Consumer Information Centers

Regional consumer information centers have been established by regional authorities as local counseling institutions. Since they have been established based on local regulations, their names differ from city to city (for example, Consumer Information Center, Consumer Resource Center, or Consumer Center), and their sizes and staffing also differ.

The main objectives of consumer information centers are to provide information to consumers, collect consumers' complaints, and perform tests on consumer goods. As of April 1, 1998, 359 such centers were in operation throughout Japan (Consumer Information Office of Economic Planning Agency, 1999).

3) Management of Consumer Counseling

The consumer complaints that reach both the JCIC and regional consumer information centers are directed to the counseling officers who are responsible for addressing the complaints. The way consumer complaints are handled in Kagawa Prefecture (Kagawa Prefecture, 1993) is presented in Figure 2. The process in other prefectures is similar.

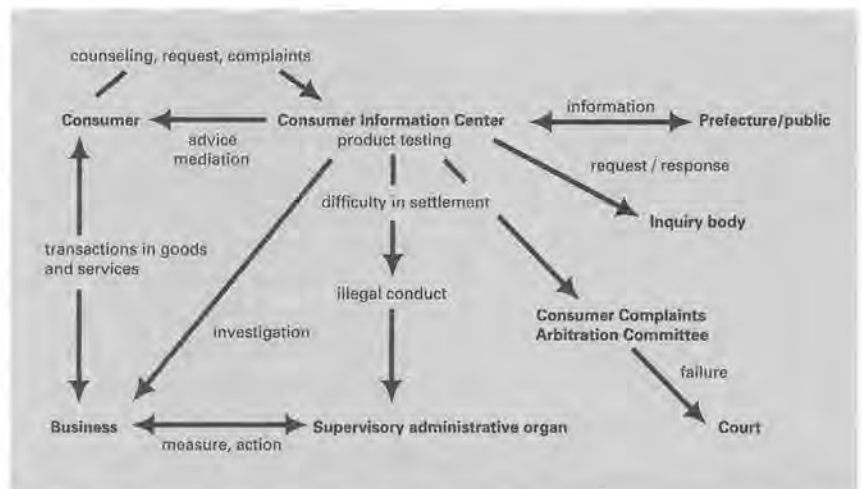
The Consumer Information Center in Kagawa provides advice to consumers so they can resolve problems by themselves. If they need a professional to deal with a specific problem—an attorney, for instance—the center introduces them to the appropriate specialist. If a law has been violated by a business, the center requests an action from the administrative body concerned. In complicated cases, the center conducts an inquiry into the facts of the case and makes a determination only after confirming the actual state of affairs. If the problems cannot be solved through counseling, consumers file lawsuits; but both the cost and the burden of

proof for consumers are so great relative to the sum they would receive that they seldom bring actions.

In 1998 in Kagawa prefecture, 70.7% of all consumers who filed complaints negotiated with the companies about the individual cases by themselves after receiving an initial suggestion from a consumer information center, 9.7% ended with a solution through mediation suggested by a counseling officer, and 4.8% required the intervention of another institution (Consumer Information Center of Kagawa Prefecture, 1999). In other words, the mediation consisted mainly of initially suggesting advice and reporting to PIO-NET. The counseling officers do not have legal qualifications, and their mediators have no compelling power (Mimura, 1988). The center can assume only a neutral position between a consumer and business, and has no legal authority to enforce its decisions.

For that reason, the consumer information centers' power to solve consumers' problems is seriously limited. Surveys of consumers who turned to centers for help suggest that many of those consumers also perceive those limitations (Research Group on Procedure in Consumer Dispute Settlement, 1980). In fact, mediation, the only measure available to the centers, has been used less and less frequently in recent years (Consumer Information Center of Kagawa Prefecture, 1999), which would seem to confirm the consumers' perceptions about the centers' limits. The authority of the Japanese consumer information centers

Figure 2. The counseling and complaints handling process followed by a regional consumer information center. The data is from the Administration in Kagawa Prefecture (1993).



is different from those of Korea and China (Hosokawa, 1991a, 1991b; China Consumer Association, 1994; Ogawa & Morita, 1999).

CONCLUSION

Based on the basic law of consumer protection and on the administrative framework for consumer protection in Japan, some progress in advancing consumer protection policies is clearly visible. Most notably, data about the extent and type of consumer problems in the country is now being collected by PIO-NET and is available through various channels. Nonetheless, making information available is not the same as using the information to develop new policies and protections. Both the number of cases and the number of consumer injuries are still growing (JCIC, 1999, pp. 148). Consumers continue to be troubled by the fact that consumer information center counseling officers do not have very much authority and their mediation is not binding.

This difficult situation is due in part to the fact that government has been slow to react to problems, failing to adopt the necessary remedies or administrative adjustments, which arrive only after the consumer problems became major dilemmas or are sensationalized in the press. When it does become clear that changes in consumer laws are necessary, problems have been treated individually rather than comprehensively.

Some have argued that consumers themselves share part of the blame. According to a survey conducted by the Prime Minister's Office in December 1994 (The Prime Minister's Office, 1995), 15% of those surveyed had problems with consumer goods and services, but only half of them reported their complaints. Thirty five percent of those who reported their cases complained to the retailers who provided the faulty goods and services, 7% complained to the makers, and only 3% consulted the consumer information centers. Approximately half of the unsatisfied consumers did not undertake any action. When consumers do report problems, however, the public cannot be informed. After the Product Liability Law was enacted in

1995, for example, consumers addressed their complaints to retailers and makers, which does not help limit the number of future occurrences, because in most of those cases they are not made public (The Product Liability Law, 1996; Tsuruoka, 1996).

Article 5 of the Consumer Protection Fundamental Law describes the role of consumers as "Playing a major role in the development of economic society, obtaining knowledge necessary for their consumers' activities, and making independent consumer decisions based on their own rationality. Consumers play an active role in the stability of consumers' lives and their progress." But if problems are not reported, or are reported only to the manufacturers, whether due to consumers' lack of confidence in the administrative side or their lack of awareness of their own rights, the interests of consumers cannot be well served.

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Monroe Friedman, 1999, *Consumer Boycotts: Effecting Change Through the Marketplace and Media*. New York, NY and London: Routledge, 284 pp., \$19.95 (paper), \$80.00 (hardcover).

“The minute we silence that cash register, they can hear everything we say,” writes Monroe Friedman, quoting an unnamed boycotter. True enough, though Friedman’s thoughtful and wide-ranging assessment of the effectiveness of boycotts comes to a mixed conclusion. There are indeed examples of boycotts that have been successful in (to use the book’s subtitle) *effecting change through the marketplace and the media*. Boycotts of Heinz (tuna) and of Benetton (animal rights) provide examples of rare cause and effect successes. More often, boycotts are marginally successful or have no long-term impact.

Consumer Boycotts is Friedman’s overview of the history of boycotts in the United States. He reviews the work of others as well as results from a number of his own studies, including his survey work from 1967 published in the *Journal of Consumer Affairs* in 1971. It is useful to have such a vast review in one source.

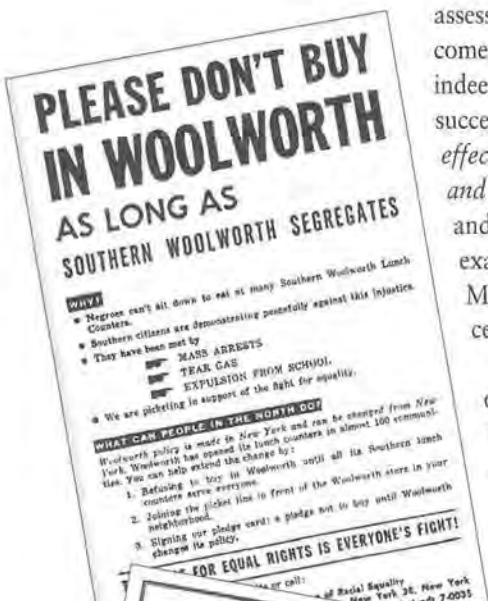
Historians may prefer a more inclusive review of the older material, but I believe the selected boycotts from the 1870s (mostly labor-inspired) through the Depression (seeking reduced discrimination in the distribution of jobs) to the 1950s and 1960s (Jim Crow streetcar laws) are effectively chosen to give the main elements and to test for success or failure. And Appendix B contains an engaging and entertaining set of definitions and observations.

One major objective of the book is to assess the factors that affect the success of marketplace-oriented boycotts. Five such factors are identified in the second chapter, as well as five “execution considera-

tions” and three possible “consequence considerations.” These are workable, though the author finds them less successful than desired. After appraising the evidence, one learns that “the objectives of the successful boycotts tended to be cognitively simple and emotionally appealing.” In the early period “actions were more likely to be successful if the boycotted goods were . . . purchased regularly by the mass of workers. . . .” An example is the 1902 meat boycott. More recently, Friedman explains, price and quality have triggered consumer boycotts in the U.S., with price proving a greater inducer than quality. However, he writes, “one should not forget that the boycotts rarely succeeded in lowering prices beyond the short term. They typically consumed many hours of largely volunteer time and energy in a losing cause.”

If most boycotts fail to achieve their main objectives, does that mean that boycotts can be assessed as failures in general? No, some have had a major impact. Further, it is necessary to evaluate the longer term effects of “voicing.” To the extent that consumer boycotts led to the passage of the Sherman Antitrust Act, I would argue for a monumental impact of an enduring nature.

The book does not cover the great international boycotts such as the one concerning Nestle on the aggressive marketing of breast milk substitutes, or of firms selling hazardous products. Included are U.S. aspects of anti-Nazi blacklists—which were measurable, though no effect could be detected on Hitler—and U.S. measures against apartheid policies in South Africa. There is no coverage of the white list of the World Health Organization’s list of essential drugs or the United Nations’ blacklist of “Consolidated List of Products Whose Consumption and/or Sale Have Been Banned.” Included are boycotts on television programming, on racial, ethnic, or gender discrimination, as well as the stream of recent boycotts related to animal rights and the environment. The latter two make more use of the media and staged events than earlier boycotts did. There is ample fodder in the book for use in U.S. classrooms, and not just classrooms devoted to consumer issues.



Serious readers will probably come away from the book with an appreciation of consumer boycotts that differs from that based on their prior beliefs, whether they are doubters or believers. A rigorous look at evidence on the effect of boycotts is moderately pessimistic. But generalizations are difficult. On the whole, we are indebted to Friedman for his comprehensive critique of the impact of consumer boycotts—when they succeeded and when they did not. Don't boycott this book! We are the richer for this highly readable appraisal.

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Irwin Garfinkel, Sara S. McLanahan, Daniel R. Meyer, and Judith A. Seltzer, eds. (1998), *Fathers Under Fire: The Revolution in Child Support Enforcement*. New York, NY: Russell Sage Foundation, \$49.95.

Social scientists and legal scholars have studied extensively the growth of single-mother households and the subsequent efforts to compel nonresident fathers to pay child support. Although a growing body of literature documents the social and economic effects of these trends on mothers and children, relatively little is known about nonresident fathers. *Fathers Under Fire*, a collection of 10 commissioned papers by 16 scholars, aims to fill the gap in our understanding of child support policy and the repercussions of efforts toward stronger enforcement for fathers who live apart from their children. For students, scholars, policy makers, and practitioners interested in child support issues, this volume is a valuable read, presenting a side of the story that is often overlooked, oversimplified, and misunderstood.

The authors assert that despite 20 years of child support enforcement legislation, collections, on average, have shown little improvement. This "disappointing record" combined with the lack of attention to fathers calls for

a reappraisal of child support enforcement policy and its impact on nonresidential fathers. Paying special attention to low-income fathers, the authors address three questions: 1) Are policies consistent with the capabilities and circumstances of nonresident fathers? 2) Do child support policies have adverse unintended effects on the fathers? 3) Should policy be reoriented to do more to assist nonresident fathers?

Part I presents two chapters that provide an excellent overview of the history of the development of child support enforcement legislation in the United States and a new understanding of the characteristics of nonresident fathers. Research on nonresident fathers has been hindered by a lack of data. Although several national surveys have attempted to identify this population, the evidence suggests that a substantial proportion of these men are either underrepresented or do not admit to being fathers. Using the National Survey of Families and Households (NSFH), researchers tackle this problem by correcting for both underrepresentation in the sample and misreporting of parental status in order to create statistically a sample that is more representative of all nonresident fathers. After clearly describing the assumptions used in this process and presenting both adjusted and unadjusted estimates, the authors conclude that nearly 40 percent of nonresident fathers are missing from the NSFH. Though one may quibble with the analysts' assumptions and estimates, it is clear that taking account of and correcting for missing fathers in survey data makes a big difference in our image of this population, because missing fathers are disproportionately disadvantaged. Compared to resident fathers, this analysis finds nonresident fathers are more likely to be very young, high school dropouts, unhealthy, and low income. Because there is a wide distribution in the circumstances of these fathers, the authors conclude that current efforts to strengthen child support enforcement should not be abandoned. However, the discovery of a large minority of very poor fathers suggests that the most important political motive for





reform—substantially reducing public expenditures—is not likely to be realized.

The five chapters in Part II investigate the “side effects” of rigorous child support enforcement. The papers describe what is known about the impact of

efforts to collect support on nonresident fathers’ income, employment, marriage, fertility, and relationships with the child and the child’s mother. To measure how stronger child support enforcement affects fathers’ behavior, four of the chapters capture the variations across states and time periods in the adoption of child support enforcement strategies. These empirical analyses draw upon the NSFH, the Survey of Income and Program Participation, and/or the National Longitudinal Survey of Youth. State-specific data from the Office of Child Support Enforcement, U.S. Department of Health and Human Services, also are used in several papers. A common theme throughout this treasure trove of findings is that more rigorous child support enforcement may have a greater effect on the behavior of low-income fathers than on that of fathers with more resources. While specific findings from these analyses will be of great interest to child support scholars, the research designs incorporating multiple data sources, cross-sectional and longitudinal samples, and creative use of simulation techniques should be instructive for a wide range of policy analysts.

Part III consists of three chapters that focus on the implications of findings presented in the earlier sections of the volume and discuss whether our society should do more for nonresident fathers. Critics of current child support enforcement efforts have argued that nonresident fathers have been treated as “objects from which money can be extracted.” Practitioners and policy makers will find these chapters to be particularly relevant. The first two chapters in this section describe two federally funded demonstration

projects that offer strategies to help nonresident fathers meet their obligations and assert their parental rights. Findings from a random assignment, quantitative evaluation of the Child Access Demonstration Projects, illustrate the complexities and difficulties of real-world efforts to intervene in parental conflicts regarding visitation, custody, or child support. A qualitative study of the Parents’ Fair Share demonstrations provides fascinating insights into the desperate lives of many nonresident fathers who are under- or unemployed and unable to pay child support. The final chapter, written by a legal theorist, steps back and assesses current policies toward poor fathers and those with second families. Two persistent questions are raised in this chapter: What should the enforceable obligation of indigent parents be? Should a nonresident parent be able to obtain a downward adjustment of a child support order due to new obligations of a second family? Following a review of normative theories of law, the author answers these questions and raises additional thought-provoking issues. Perhaps the greatest value of the final chapter is its contribution of a “frame of analysis” for considering the ethical and legal obligations of parents and the rights of children.

In their concluding remarks, the editors’ summarize “answers” to the three key questions that provide the organization for the book, point to areas that merit future research, and offer specific recommendations for improving the current child support enforcement system. The research agenda should keep many social scientists busy for years to come, while the policy recommendations will be grist for the mill in many family policy classes and public deliberations. Garfinkel and his colleagues have penned a volume that should be on the bookshelves of scholars, practitioners, and policy makers who are concerned about the future of this nation’s children.

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Barry Dickman, Trudy Lieberman, and Elias Zuckerman. (1998), *How to Plan for a Secure Retirement*. Yonkers, NY: Consumer Reports Books, \$29.95.

Although the decision to retire represents one of the most important transitions anyone faces, it has been well documented that members of the baby-boom generation are not currently saving enough to support their retirement at their current level of consumption (Yuh, Montalto, and Hanna, 1998; Bernheim, 1996; Moore and Mitchell, 1998). The major stumbling block for financial educators and researchers alike is figuring out where people go wrong. Why do people have such a hard time saving for their retirement? Is it a lack of discipline? Or a lack of information? If lack of information is the problem, then what types of information are needed?

In writing *How to Plan for a Secure Retirement*, authors Barry Dickman, Trudy Lieberman, and Elias Zuckerman have undertaken a herculean task. The authors of this *Consumer Reports* publication not only endeavor to provide the conceptual information individuals need to grasp concepts like the time and risk value of money, they also seek to explain the financial planning environment and the rules and regulations of private and public retirement programs, as well as offering sound consumer information about purchasing different financial services. Successfully addressing even one or two of these subjects would be a formidable accomplishment, but here, the authors manage to realize all of their objectives adequately.

The structure of the book is quite appealing. It starts where I believe it should—with the most basic tenets of retirement planning and gradually moves on to more specific financial issues. The first seven chapters, which are grouped under the heading entitled “Income” (actually, I think “Basics” would have been a better title), could stand alone as a sort of a retirement planning novella. Chapter 1 discusses how to figure out how much money you need to retire, and how to

save enough to meet that goal. The next four chapters discuss specific savings and income vehicles: Social Security, pensions, annuities, and life insurance. The last two deal with taxes and “Who manages your money when you can’t.” The discussion of the Social Security System is particularly strong.

Explaining the different types of benefits for workers, spouses, dependents, and survivors can be a daunting task, especially to present these in a way that’s informative, comprehensive, and relatively easy to read.

Readers interested only in the main aspects of financial planning might not feel the need to read further, but for the prospective or current retiree who is looking to dot all the i’s and cross all the t’s, there are three more parts to the book: Health Care, Housing, and Estate Planning. There is no question that sorting out all of these is absolutely essential to a successful retirement. The most careful and conservative saving strategies in the world won’t amount to a hill of beans without adequate health insurance in retirement. The problem with this material is that it is on the dry side. For example, there is a four-page explanation of the 10 hybrid “medigap” policies (types *a* through *j*). No one without serious insomnia is likely to read any of parts 2 to 4 all the way through. Perhaps it’s a testament to the authors that the first part reads so well. Nevertheless, you get the distinct feeling of diminishing returns the further you read.

But this perception is definitely not reality, because these latter chapters are full of accurate and relevant information on Medicare (what it pays for and what you pay for), housing alternatives in old age, and figuring out how to arrange for your heirs to keep most of what you leave them. Again, I think the sequencing is right on the money here, from the most universal issues to the least. Almost everyone will need to read at least some of the section on health care (chapters 8-14), but estate planning (found at the end of the book, chapters 18 and 19), may be relevant only for people with a significant estate at the end of life. And of course, in the *Consumer Reports* tradition, there are plenty

of consumer caveats. This is probably the competitive advantage of the book: unbiased consumer information that is prescriptive without being too preachy. When it comes to health care and housing, buyers need to be particularly beware, and the authors not only do a good job of discussing alternatives, but of briefing readers on their rights as consumers, common fraudulent or misleading practices, and where to get help.

This book doesn't provide everything the reader would ever want to know about retirement, however. One of the areas where the book falls short is in its treatment of time value of money material. The worksheets are useful, but wouldn't it be better to actually help us learn some of this stuff for ourselves? And at times, the book goes step by step through the easy stuff but balks on the hard stuff. For example, consider the section entitled "How do you want your money?" which discusses the pros and cons of different types of pension payout schemes. The authors take you through the costs and benefits, complete with an example, of taking a 401(k) as a lump sum versus rolling it over into an annuity. This is a much easier problem for someone to solve on their own than, say, figuring out whether to take a lump sum in lieu of survivor benefits. The former requires that you know how to take a present value and your marginal tax rate. The latter requires that, and more, including survival probabilities and your tolerance for risk. Unfortunately, less instruction is offered on the more complex problem. The reader is advised to "work through several calculations to make sure your spouse will do better

under the lump-sum option." This instruction seems less than promising since the authors earlier seemed to imply that readers are incapable of these calculations. I would have liked to have seen an opposite strategy: more detail given to the more complex problems, and trusting that the reader can handle the easier stuff for themselves.

Another annoyance is that being "forced out" is treated as some kind

of given. For example: "If your employer asks you to take early retirement, first consider whether you really want to or *if you have a choice.*" (italics added). For most occupations, it is illegal for an employer to fire you because of your age, and the authors could have taken this opportunity to inform people of their rights in this regard. Who should I contact if I think I am the victim of age discrimination? If I am over 55 and they replace me with a younger worker, is that sufficient evidence of age discrimination? While traditionally *Consumer Reports* does a very good job of informing consumers of their rights, a comparable opportunity is missed here for the worker.

Although the first part of the book is quite an essential read for any prospective retiree, no one will ever get their arms around the rest of the material in one sit-down; it is more likely to be consulted on an adhoc basis. In other words, this book is probably more useful as a reference, it is not a page-turner. I wish a chapter on health care and maybe housing had been included in the first part, so that those with a limited attention span would get at least a "Cliff Notes" treatment of these important basic subjects. Despite this deficiency, *How to Plan for a Secure Retirement* would be a valuable addition to every prospective retiree's bookshelf.

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Consumer Law: Advances and Setbacks

SETBACK: WTO BEEF HORMONE RULING

Can a country that has agreed to the rules of the World Trade Organization (WTO) legislate or regulate to ban consumer food products it believes do not promote public health? In the 1998 Beef Hormones decisions, WTO Doc. WT/DS26/R/USA (Aug. 18, 1997) WTO Doc. WT/DS26/AB/R, WT/DS48/AB/R (Jan. 16, 1997) (located at <http://wto.org/wto/dispute/distab.htm>), two bodies of the World Trade Organization, a panel and an appellate body, held that the European Community's ban on hormone-treated beef was unlawful because it was not sufficiently based upon scientific documentation. These bodies determined that under the "Agreement on the Application of Sanitary and Phytosanitary Measures" (SPS Agreement), countries are not free to impose a food ban based on their own national deliberative processes when reputable international organizations hold a different, less critical view or when there is no relevant international standard.

Convinced that many consumers feared hormone treated beef, the European Union took measures to restrict their use. In 1985, following many years of controversy in various European nations, the Council of the European Union banned the use of several natural and synthetic hormones. This ban was overturned and then reinstated in EU tribunals. The EU's highest court ultimately concluded that the ban was within the power of the European Council. In the court's view, exporters and importers were not entitled to

expect that banning use of five hormones "could be based on scientific data alone."

The council had not exceeded its discretion in responding to "precautionary concerns" about possible connections to adverse health consequences expressed by the European Parliament and the "anxieties and expectations" of consumers expressed by several consumer organizations, notwithstanding the absence of reliable scientific evidence of associated health risks.

Producers in the United States viewed matters differently. Not only did they believe hormone-treated beef was safe, but that it led to efficiency gains for producers that ultimately were translated into consumer savings. A 1987 study conducted by the U.S. Department of Agriculture (USDA) had reported that steers and heifers grew much faster and with relatively less feed if they received hormone implants. In addition, hormone treated animals had less fat and more meat. In a competitive market, the USDA stated, the reduced cost of producing beef and the greater supply resulting from the use of growth promoting hormones would benefit consumers in the form of greater availability and lower retail prices of beef. The EC ban on the use of the hormones, the report concluded, reduced EC beef production by 588 million carcass pounds annually. The United States and others brought a complaint against the EC ban to the World Trade Organization.

The WTO Panel found against the EC. It declared that an assessment of risk under the





“Agreement on the Application of Sanitary and Phytosanitary Measures” must be “a scientific examination of data and factual studies” and not “a policy exercise involving . . . value judgments made by political bodies.” On appeal, the EC raised many issues. But the Appellate Body stated that while “[p]anels should recognize that members act from . . . precaution where risks of irreversible damage to human health are concerned,” the precautionary principle did not by itself relieve the panel from enforcing agreements such as the SPS between members of the WTO. The SPS Agreement required scientific risk assessments to support measures taken by various states to adopt regulatory restrictions.

Consumer regulatory principles, which often support precautionary measures prior to definitive scientific results, do not receive deference at the WTO. The SPS Agreement in particular, as applied by the WTO, is designed to dampen the protectionist impulses of national legislatures, not to err on the side of consumer health and safety concerns.

ADVANCE: BINDING ARBITRATION CLAUSES

In an effort to reduce litigation costs, more and more creditors require consumers to sign arbitration agreements requiring the consumer to submit a dispute to arbitration prior to filing a lawsuit. One of the problems with many such agreements is that they require consumers to finance most of the arbitration costs themselves. In Randolph v. Green Tree Financial Corp., 178 F.3d 1149

(11th Cir. 1999), the court held that arbitration clauses are unenforceable if they prevent consumers from vindicating their statutory rights due to steep filing fees, arbitrators’ fees, or other high costs of arbitration.

Larketta Randolph financed a mobile home purchase in 1994 through Green Tree Financial Corporation. She was required to obtain “vendor’s single interest” insurance as part of the financing agreement. Vendor’s single interest insurance protects vendors and lienholders against repossession costs during default. The agreement, however, did not specifically disclose this expense as required by the federal Truth in Lending Act (TILA). The agreement also contained an arbitration provision requiring all disputes be submitted to binding arbitration. The provision was silent regarding who was to bear the costs of arbitration (i.e. the consumer or the creditor) and it did not say if the consumers would be responsible for these costs even if they prevailed. The clause also did not provide for a waiver in cases of financial hardship or specify what, if any, set of rules would apply during arbitration proceedings.

Randolph filed suit in district court in 1996, alleging that Green Tree violated TILA by failing to include the cost of vendor’s interest insurance in its TILA disclosures and by failing to include information about which party was responsible for arbitration fees. Green Tree moved to dismiss the action and compel Randolph to arbitrate her claims. The district court granted the motion.

Randolph appealed to the Eleventh Circuit. The court first had to determine if the district court’s order to compel arbitration was a final decision under the Federal Arbitration Act and thus ready to be appealed. The court examined the legislative history of the act and determined that an appeal could be taken from a final judgment dismissing an action in favor of arbitration. Accepting an appeal after such a dismissal followed the general policy that appeals should be available when there is nothing left to be done in the district court.

The Eleventh Circuit then found the arbitration clause invalid. Because the clause did

not specify who was to bear the costs of arbitration, it failed to ensure that the consumer's statutory rights would not be undone by high arbitration costs, and was thus unenforceable. The court compared this arbitration clause to others previously held enforceable. Clauses can be enforceable despite high costs if successful arbitral claimants are awarded with fees and costs.

However, the clause in Randolph's agreement was completely silent on this issue. As a result, the court held that Randolph might be required to bear substantial costs associated with the arbitration even if she were to prevail on her TILA claim. The court did not go so far as to declare that all arbitration clauses are precluded by TILA, since it only held that the arbitration clause in this particular case was unenforceable.

SETBACK: CREDIT DENIALS

The Fair Credit Reporting Act (FCRA) requires that creditors provide consumers with information obtained from third persons other than a consumer reporting agency that leads to a credit denial if the consumer requests such information. In a narrow reading of the legislative intent behind the FCRA, the court in (Matthiesen v. Banc One Mortgage, 173 F.3d 1242 (11th Cir. 1999)), held that information coming from the consumer herself that leads to a credit denial is not information that a creditor must disclose upon request.

Lorna Matthiesen applied for a loan to refinance her home mortgage. Part of her application packet included copies of old tax returns. The returns showed that Matthiesen did not have a steady form of income. Banc One Mortgage denied her loan application, stating that the decision was based on an inability to verify her income. Banc One also told Matthiesen that it had based its decision on an "outside source other than a consumer reporting agency." Matthiesen requested the identity of the source, but Banc One did not respond to the inquiry.

Matthiesen sued, alleging a violation of

the Fair Credit Reporting Act (FCRA). Matthiesen argued that she was a person other than a consumer reporting agency, and, if the information used came from her, the creditor was required to disclose it. Based on the statutory language and the purpose of the statute, the Tenth Circuit rejected her argument.

The court focused on the use of the terms "person" and "consumer" in the FCRA. Both a "person" and a "consumer" are defined to include an individual. An individual, however, can be identified in only one of two ways, as a person or a consumer. When Congress decided to require credit reporting agencies to inform an applicant when credit is denied based on "information obtained from a person other than a consumer reporting agency," it meant an individual other than a consumer. Otherwise, the act would read "information obtained from a person or consumer other than a consumer reporting agency."

The court also stated that the FCRA's purpose was to protect consumers from the spread of false or misleading credit information. Because information contained in an applicant's income tax return should not contain information that is false or misleading, the act did not apply to this case. The court also stated that while Banc One could easily have explained the reasons for its denial in a less confusing manner, failing to do so did not trigger liability under the act.

ADVANCE: NEGLIGENT CREDIT REPORTING

If a consumer disputes an item contained in a credit report, the credit reporting agency has a duty to reinvestigate the information and confirm its accuracy. In O'Connor v. Trans Union Corporation, 1999 WL 773504 (E.D.Pa.), the court held that a credit reporting agency cannot ignore this duty even if a consumer requests a reinvestigation of the entire credit report, rather than disputing each item on the report individually. However, the court denied the plaintiff's request for punitive damages.



James O'Connor applied to First Union Bank for a credit line increase in December of 1996. Based on information contained in his credit report, however, the request was denied. O'Connor wrote to the credit reporting agency and requested that it check the items in his report and delete those not relating to him. The report mistakenly contained adverse information belonging to O'Connor's son and daughter-in-law. The credit reporting agency, Trans Union, apparently confused O'Connor with his son and reported the adverse credit items as if they were O'Connor's. The information received by Trans Union concerning O'Connor's son did not contain a social security number, address, or date of birth that matched O'Connor's. Trans Union sent O'Connor an updated copy of his credit report after making a few corrections, but this copy still contained inaccurate information. O'Connor brought suit against Trans Union, alleging negligent non-compliance of the federal Fair Credit Reporting Act (FCRA) and defamation under state law.

A consumer can establish negligent non-compliance with the FCRA by demonstrating that a credit reporting agency failed to reinvestigate items on a credit report when they are disputed by the consumer. Trans Union argued that it had no duty to reinvestigate items on O'Connor's credit report because he failed to notify them of items in dispute. Trans Union relied on a number of cases holding that prior to being notified by a consumer, a credit reporting agency has no duty to reinvestigate credit information. Trans Union admitted that O'Connor disputed the contents of his file, but it argued that he had to identify a specific item on the report in order to trigger its duty to reinvestigate. O'Connor had identified not just one incorrect item on the report; he demanded that each item in the report be reinvestigated to ensure that it actually pertained to him. O'Connor had also provided the agency with the only address he had held since 1959, and informed them that the addresses contained in the report belonged to his son. The court held that this request satisfied the plaintiff's

duty to show that he disputed an item, and that Trans Union did in fact have a duty to reinvestigate the information on the credit report. Also, the fact that Trans Union did (partially) reinvestigate the report after receiving O'Connor's initial letter showed that it felt obligated to do so, and the court did not allow the agency to later claim they had no duty to reinvestigate.

Trans Union then asserted that any inaccuracies in O'Connor's credit report that were the result of its mistakes made no difference to O'Connor's credit denial. It argued O'Connor would have been denied credit in any event because of an accurate adverse credit item on his report and that Trans Union's mistake was not the proximate cause of O'Connor's credit denial. The court rejected this argument. Causation under the FCRA is shown by a preponderance of the evidence. The court found that a reasonable juror might not agree that a creditor would view an applicant with one adverse credit item on the same level as an applicant with four or five adverse items.

O'Connor also argued that he was entitled to punitive damages as a result of Trans Union's failure to properly reinvestigate items on his report. Punitive damages are appropriate under the FCRA when the defendant's noncompliance with the act is willful. Willful noncompliance is shown when a credit agency "knowingly and intentionally commits an act in conscious disregard for the rights of others." O'Connor argued that Trans Union adopted its reinvestigation policy knowing that it conflicted with the rights of consumers under the FCRA. O'Connor failed to put forth evidence to support his allegation, and his request for punitive damages was denied.

O'Connor had also filed a state law defamation claim against Trans Union. A defamation claim can stand with a cause of action under the FCRA only if the defendant furnished false information with malice or willful intent to injure a consumer. The court used the same test of willfulness it had used in determining if punitive damages were appropriate, and again found that O'Connor

had failed to provide evidence showing defamatory statements were made with knowledge that the information was false or with reckless disregard as to its falsity.

In sum, the court denied defendant's summary judgment motion on O'Connor's claims of negligent noncompliance, and granted its motion for summary judgment on O'Connor's claims for punitive damages and defamation.

ADVANCE: FAIR DEBT COLLECTION PRACTICES

The Fair Debt Collection Practices Act (FDCPA) requires that debt collectors provide notice to consumers that they have 30 days to contest a debt, but unscrupulous debt collectors, in an attempt to collect the debt as soon as possible, often employ additional language in their letters that confuses debtors as to their statutory entitlements. Two recent decisions, Johnson v. Revenue Management Corp., 169 F.3d 1057 (1999) and Withers v. Equifax Risk Management, 40 F. Supp. 2d 978 (1999), liberally interpreted the FDCPA notice provision to effectuate its purpose of providing consumers with effective notice of their rights when being dunned by debt collectors.

In *Johnson*, two class action suits were brought in the northern district of Illinois against two different debt collectors for violating the FDCPA's notice provision, which were consolidated on appeal following dismissal. The court of appeals overturned the district court's dismissals regarding alleged violations of the FDCPA, holding that: 1) a claim that debt collector's letter was confusing to consumers, in violation of the FDCPA, is sufficient to survive dismissal for failure to state a claim under Rule 12(b)(6); 2) whether language in a dunning letter "contradicts or overshadows" statutory notice is not the legal standard, but a question of fact which should be resolved by inquiry as to whether it had the effect of confusing consumers (need to look at evidence to determine how an "unsophisticated" consumer would react); and 3) plaintiffs are entitled to an opportunity

to introduce evidence to show that letters were "sufficiently confusing that unsophisticated consumers failed to understand their rights."

The notification provision of the FDCPA Sec. 809(a) 15 U.S.C.A. Sec. 1692g(a) requires that within five days after a debt collector first duns a consumer debtor, the collector must send a notice stating that, unless the debtor "disputes the validity of the debt" within 30 days the debt collector will assume the debt is valid. If the debtor notifies the collector within 30 days that he or she disputes the debt, then the debt collector will obtain verification of the debt from the creditor and will send a copy of the verification to the consumer. Prior case law has held that this section of the FDCPA obliges debt collectors to refrain from confusing the debtor with language that undercuts the required notice or implies a different obligation. Demands for the debt to be paid "immediately" or the threat of immediate suit have been held to violate the FDCPA by implying the consumer does not have 30 days to ask for verification of the debt, or at least could give that impression to an unsophisticated consumer.

The court examined letters received by two class members that contained the required statutory notices, but that also contained contradictory language. One letter threatened legal action if the debtor "[failed] to make a prompt payment," and the other letter stated: "Call our office immediately . . ." The court reasoned that neither letter attempted to explain how a demand for a "prompt" payment or "immediate" action could be reconciled with the 30-day statutory period, and that requesting an "immediate" phone call could be confusing because the FDCPA specifically requires the debt verification request to be in writing. The court stated that on remand, it will be necessary for the plaintiffs to show that the additional language of the letters received unacceptably raised the level of confusion for the notice to be effective.

This decision advances the consumer interest because it will likely give more consumers

their day in court to prove they were or could have been confused as to their statutory entitlements under TILA, rather than allowing judges to dismiss these actions because the debt collectors did or did not employ any specific language in their letters.

The second case, *Withers*, was also in Illinois. Decided two months after *Johnson*, it seems to incorporate the same pro-consumer interpretation of the FDCPA statutory notice provision. This case was a class action on behalf of consumers against a debt collector for allegedly violating the FDCPA by sending deceptive letters that "overshadowed" the debtors' statutory rights. The court held that a letter informing debtors that they would be placed on a nationwide "bad check" list along with the required statutory notice violated the FDCPA by serving to confuse an unsophisticated consumer and would lead him or her to believe that they would not be able to write checks until they paid the debt.

The letter sent by the debt collector stated: "This information has also been reported to Equifax Check Services, whose check authorization and verification services are widely used by banks and business establishments nationally as a basis for check acceptance," and, "THIS WILL BE CLEARED WHEN PAID." On the back of the letters, along with a paraphrase of the FDCPA notice, there was additional information concerning residents of Massachusetts and Colorado, which conveyed the impression that only these residents have the ability to stop debt-collector communications, when in fact all U.S. residents have this right.

The court held that the debt collector's letter would confuse an unsophisticated consumer about his or her rights. The court stated, "It is almost as if the defendant struggled to eliminate phraseology previously ruled offensive, while maintaining the ability to coerce the debtor into paying immediately." Through the letter, the unsophisticated consumer is left with the incorrect impression that, regardless of the validity of the debt, the most efficient, and perhaps the only way to redeem his or her

check-writing privileges is to pay the debt.

Like the prior case, this decision benefits the consumer interest, because the court refuses to allow the debt collector to try to comply with the technical provisions of TILA while still trying to thwart its intended purpose of fairly informing debtors of their rights.

ADVANCE: PAYDAY LOANS

The Truth in Lending Act (TILA) is a comprehensive regulatory scheme intended to deter predatory extensions of credit that can increase the personal bankruptcy rate. TILA is intended to exempt only lenders whose extensions of credit are an occasional, isolated, or incidental portion of their business. There has been a recent growth in so-called "deferred presentment" or payday loan stores, which provide quick credit at extremely high interest rates, and have been referred to by some as "legal loansharking." In Turner v. E-Z Check Cashing of Cookeville, 35 F. Supp. 2d 1042 (MD Tenn. 1999), a district court in Tennessee held that TILA applies to "deferred presentment" institutions, and granted summary judgment to the plaintiffs for numerous violations of TILA and the Tennessee Consumer Protection Act (TCPA) by the defendant.

The case involved a very sympathetic plaintiff, Patricia Turner, a woman with only an 8th grade education who had recently been laid off and had to file for personal bankruptcy. The defendant is a so-called deferred presentment institution, which the court described as working in the following manner: 1) the customer writes a post-dated check for an amount of cash and an additional "service fee" to be collected 30 days later; 2) at the end of the period, the customer can repay the principal amount and service fee and retrieve the uncashed check, allow the business to cash the original check, or pay only the service fee and write a new post-dated check for the principal amount and service fee.

Turner began a series of transactions with EZ in July 1996, when she received a loan of \$300 in exchange for a post-dated check for

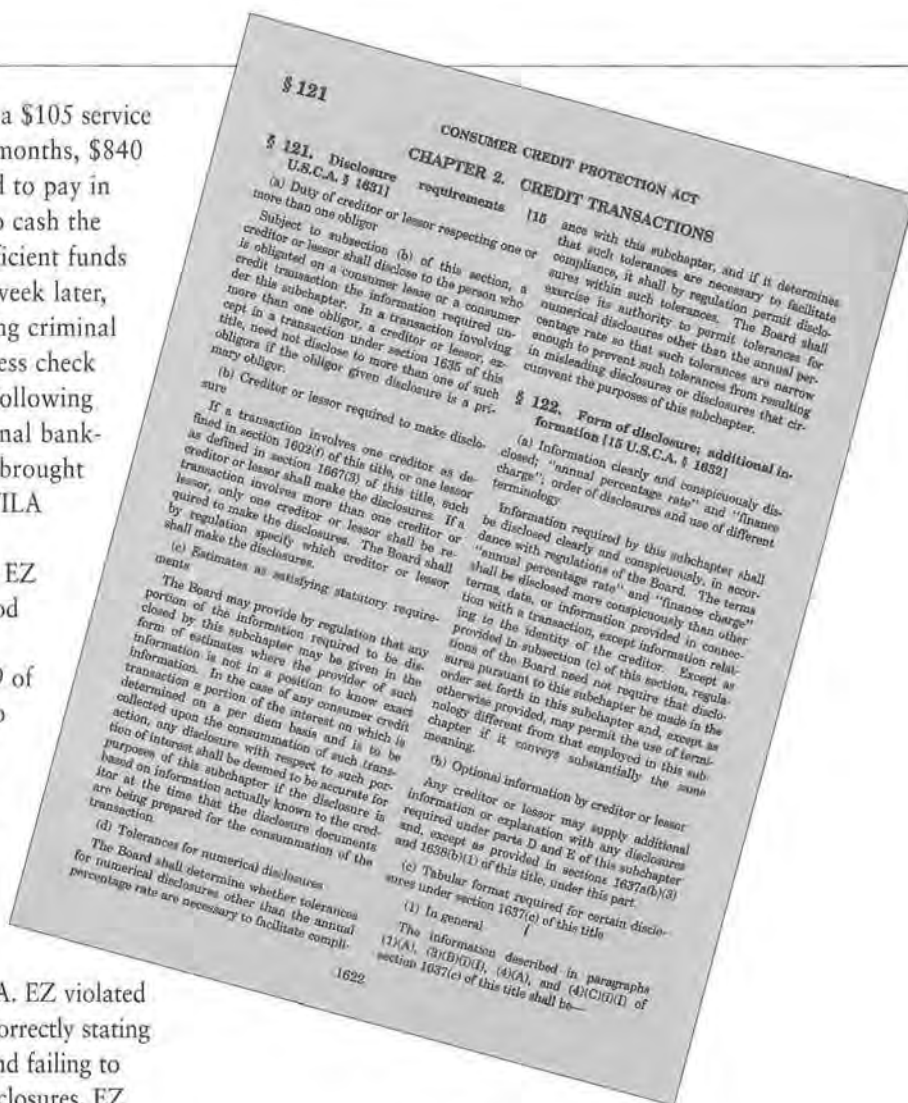
\$405. After continuing to pay a \$105 service charge each month for eight months, \$840 for a \$300 loan, Turner failed to pay in April 1997. When EZ tried to cash the \$405 check, there were insufficient funds in Turner's bank account. A week later, EZ sent her a letter threatening criminal prosecution under the worthless check law if she failed to pay. The following month, Turner filed for personal bankruptcy. In June 1997, Turner brought this action for violations of TILA and TCPA by EZ.

The loan agreement used by EZ contains a part called the "Good Faith Estimate of Settlement Charges," which attributes \$99 of the \$105 fee for a \$300 loan to "investigating checking account," which in fact costs EZ only \$.45 per transaction, and \$6 interest charge. The form also lists the annual interest rate as 24%, which actually is over 400% when calculated correctly under TILA. EZ violated various TILA provisions by incorrectly stating the finance charge and APR, and failing to make required conspicuous disclosures. EZ also violated the TCPA through acts and omissions constituting unfair, deceptive, or unconscionable trade practices, by threatening criminal action against the plaintiff without a legal basis and providing misleading TILA disclosures.

The court held that courts have held without exception that payday loan institution transactions are extensions of credit under TILA and must conform to its required disclosures. The court found each of the following TILA violations: 1) TILA requires that "total of payments" consists of sum of amount financed and finance charge, which in this case would be \$405 (\$300 + \$105), not \$306 as stated by EZ; 2) EZ's disclosure statement uses the same type and boldness for the finance charge and APR as the rest of the disclosure, failing to make them more conspicuous as required by TILA sec. 1632(a); 3) EZ failed to segregate the item-

ization of the finance charge and APR as required by Regulation Z sec. 226.17(a); 4) EZ incorrectly stated the "finance charge" as \$6, not \$105, in violation of TILA sec. 1638(a)(3); and 5) because the total amount financed was over \$75 and the finance charge was over \$7.50, TILA required EZ to disclose the APR, which is over 400%, not 24% as claimed by EZ.

The court also found that EZ violated the TCPA, holding that EZ's threat to bring criminal action against the plaintiff was a remedy the defendant knew did not exist and had no right to threaten. The court held that "deferred presentment" lenders cannot prosecute under the worthless check law, and even if they could, criminal prosecution is the state's remedy, not a private right. In addition, the court found that EZ's loan agreement violated the unfair and deceptive practices act under TCPA by claiming that



"The Amount You Will Have Paid at Settlement" was \$405, which the defendant knew was deceptive as evidenced by the fact that the plaintiff has already paid \$840 and still owes full amount of \$300 advance and additional \$105 in finance charges.

Earlier in this issue of ACI, Jean Ann Fox has considered the subject of payday loans in Safe Harbor for usury, p. 7. This case and other cases along the same lines are advances because they hold payday lenders to the same TILA standards as other more traditional creditors, and demonstrate the harm that can be caused in the absence of sufficient regulation to control or disclose the excessive interest being charged to low-income consumers.

Editor's Note:

*In our last issue, we reported a consumer "advance" resulting from the decision in *Abt. v. Mazda American Credit*, No. 98 C 2931, 1998 WL58837 (N.D. Ill. 1998), by holding that burying "disposition fees" in the text of leasing agreements violates the Consumer Leasing Act. Since the commencement of this case, a new rule issued by the Federal Reserve Board amending Regulating M changes the required disclosures for lease agreements. A further discussion of these changes appears in the Reaction by Jeanne Hogarth in this issue of Advancing the Consumer Interest, and at <http://www.federalreserve.gov/pubs/leasing>.*



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 - Include a headnote not exceeding 75 words. This headnote is for the purpose of review only.
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 - Each table, graph, figure, and chart should be comprehensible without references to the text and placed on a separate page included at the end of the manuscript. Omit all vertical lines. Use letters for footnotes to tables and asterisks for statistical significance.
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Leet, D. R. and Driggers, J. (1990). *Economic decisions for consumers* (2nd ed.). New York: Macmillan.
 - Journal articles (notice inclusive pages):
Peltzman, S. (1981). The effects of the FTC advertising regulation. *Journal of Law and Economics*, 24, 403-448.
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