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An Agricultural Law Research Article

## **The State Regulation of Agricultural Credit**

by

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# THE STATE REGULATION OF AGRICULTURAL CREDIT

*John L. Brown\**

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## I. INTRODUCTION: HOW HAVE STATES REGULATED AGRICULTURAL CREDIT?

State policy makers should not ignore the history, success, or failure of prior legislative initiatives when formulating laws and regulations. This is particularly true regarding state laws regulating agricultural credit. This Article traces the regulation, de-regulation, re-regulation, and the recent second de-regulation of agricultural credit. This analysis includes the reasons for this vacillating legislation and concludes by offering alternatives that may be more successful in meeting the public policy goals.

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## II. A HISTORICAL PERSPECTIVE

### A. *Ancient Usury Limits*

Most of recorded history includes extreme limits or outright prohibitions on charging interest on loans.<sup>1</sup> This historical aversion to interest is deeply rooted in both secular and religious codes.<sup>2</sup> Public hostility to profitable lending continued into the early years of the American Colonies.<sup>3</sup> Consequently, most states severely limited interest rates and imposed criminal penalties for exceeding those limits,<sup>4</sup> even though most other prices were not regulated.

### B. *The De-regulation of Business Credit*

Economic realities were in conflict with state law limitations that severely limited interest rates. This conflict was particularly evident in business credit.<sup>5</sup> Expanding businesses had a need for significant capital investment, but those new businesses also had a high risk of business failure.<sup>6</sup> This risk, coupled with low usury limits, effectively resulted in denial of capital to many expanding businesses.<sup>7</sup> If lenders could not charge an interest rate that was sufficient to cover their costs and compensate them for their repayment risk, they would not lend money. It was also recognized that business owners were typically sophisticated borrowers, who should be able to bargain for the best price for all their business inputs, including credit, without hindrance from artificial government price controls.<sup>8</sup>

The courts reacted to this dilemma by creating numerous technical exceptions to usury, based on factors such as lack of usurious intent<sup>9</sup> or the rule that financing provided by the seller of the goods purchased with the credit was not a "loan" subject to the usury laws.<sup>10</sup> Eventually, these financial pressures caused most states to amend their laws to exempt business credit, including agricultural credit, from their usury limits.<sup>11</sup>

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1. See *State ex rel. Embry v. Bynum*, 9 So. 2d 134, 139 (Ala. 1942).

2. See *id.* at 139-40.

3. See James M. Ackerman, Note, *Interest Rates and the Law: The History of Usury*, 1981 ARIZ. ST. L.J. 61, 85.

4. See IOWA TERR. REV. STAT. ch. 81, §§ 1, 2, 6 (1843); IOWA CODE § 945 (1851).

5. See Ackerman, *supra* note 3, at 85-88.

6. See *id.* at 86-87 (discussing the effects of usury laws on businesses).

7. See *id.* at 86.

8. See *id.* at 87-88.

9. See *Brown v. Cass County Bank*, 53 N.W. 410, 412 (Iowa 1892).

10. See *Hogg v. Ruffner*, 66 U.S. (1 Black) 115, 118-19 (1861); *Phillips v. Allis-Chalmers Credit Corp.*, 339 S.E.2d 302, 303 (Ga. Ct. App. 1985); *John Deere Indus. Equip. Co. v. Delphia*, 511 P.2d 386, 389-90 (Or. 1973).

11. See generally Ackerman, *supra* note 3, at 87-89 (discussing the evolution of exceptions

### C. *The Rise of Specialized Consumer Credit Regulation*

The restrictive usury laws prompted a different legislative response for consumer credit. One motivating factor behind early specialized consumer credit laws was the rise of illegal consumer lending operations ("loan sharks"), who not only violated the usury laws but often collected their loans by violating criminal laws.<sup>12</sup> A second motivating factor was a growing demand for consumer credit, as the growing class of industrial wage earners sought to buy automobiles and homes.<sup>13</sup> These developments, coupled with the death of a wealthy financier, caused an almost universal adoption of consumer small loan and sales finance laws by the states.<sup>14</sup>

The wealthy financier, Russell Sage, accumulated a substantial fortune on Wall Street.<sup>15</sup> On his death, he left his \$70 million fortune to his wife, who devoted a major portion of those funds to the creation of the Russell Sage Foundation.<sup>16</sup> The broadly-defined purpose of the Foundation was "the improvement of social and living conditions in the United States of America."<sup>17</sup> The Foundation completed several economic studies of how credit was obtained by wage earners, and based on the results of its studies, it drafted the Model Small Loan Law to address problems in that area.<sup>18</sup>

The proposed legislation drafted by the Foundation allowed small loans to be made to consumers at much higher rates and subjected this consumer lending to rigorous state regulation.<sup>19</sup> Those regulatory requirements included a license application process, frequent examinations by state officials, and license revocation and criminal penalties for violations of that law.<sup>20</sup> The Model Small Loan Law was first published in 1916 and was adopted by most states within twenty years.<sup>21</sup> Those states also adopted similar limits relating to consumer sales finance—credit extended by sellers to consumer buyers to purchase goods and services from a merchant.<sup>22</sup>

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in state usury laws); *see also* 815 ILL. COMP. STAT. 205/4(1)(c) (West 1993); IOWA CODE § 535.2(2)(a)(5) (1997).

12. *See Ackerman, supra* note 3, at 90-92.

13. *See id.* at 93-94.

14. *See id.* at 93.

15. *See* 1 JOHN M. GLENN ET AL., RUSSELL SAGE FOUNDATION 1907-1946, at 3 (1947).

16. *See* 1 *id.* at 3.

17. 1 *id.* at 11.

18. *See Ackerman, supra* note 3, at 92.

19. *See* F.B. HUBACHECK, ANNOTATIONS ON SMALL LOAN LAWS 1-2 (1938).

20. *See id.* at 2.

21. *See id.* at 3.

22. *See Ackerman, supra* note 3, at 96.

### D. *The Re-regulation of Agricultural Credit*

#### 1. *The Federal Truth-in-Lending Law*

In the 1960s, agricultural credit was partially re-regulated because of the mistaken premise that it was similar to and should be regulated like consumer credit.<sup>23</sup> The origin of the inclusion of agricultural credit within consumer credit regulation appears to be the adoption of the federal Truth-in-Lending Act in May 1968.<sup>24</sup> It included agricultural credit of twenty-five thousand dollars or less, and agricultural credit secured by residential real estate, in the credit transactions subject to its disclosure requirements.<sup>25</sup>

Former Secretary of Agriculture, Orville L. Freeman, supported subjecting agricultural credit to those consumer disclosure requirements.<sup>26</sup> It was also supported by the National Farmers Union and the National Grange, each of which had approximately 300,000 members.<sup>27</sup> However, the statements of the National Farmers Union and the National Grange addressed high interest rates and the unavailability of credit, not any benefits from additional disclosures.<sup>28</sup>

The Farm and Industrial Equipment Institute, representing 220 companies that manufactured over ninety percent of the agricultural and construction equipment produced in the United States, submitted a prepared statement proposing that all commercial credit be exempted.<sup>29</sup> That statement noted the detrimental effect the legislation had in discouraging the offering of flexible lending terms because the disclosure requirements were designed for regular monthly payment

23. *See id.* at 99.

24. *See* Consumer Credit Protection Act of 1968, Pub. L. No. 90-321, § 103(h), 82 Stat. 146, 147 (1969).

25. *Id.* § 104(3), 82 Stat. at 147.

26. *See Truth in Lending - 1967: Hearings on S. 5 Before the Subcomm. on Fin. Insts. of the Comm. on Banking and Currency*, 90th Cong. 19 (1967) [hereinafter *Truth in Lending - 1967*] (letter of Orville L. Freeman, Secretary of Agriculture read into record by John J. Sparkman, Chairman, Committee on Banking and Currency).

27. *See id.* at 391-96 (statement of E.W. Smith, President, North Dakota Farmers Union and Chairman of the Board, National Farmers Union, accompanied by Blue A. Carlsenson, Assistant Legislative Director, National Farmers Union); *id.* at 710-11 (letter of Herchel D. Newsom, Master, National Grange, read into record by William Proxmire, Chairman, Subcommittee on Financial Institutions).

28. *See id.* at 390-99 (statement of E.W. Smith, President, North Dakota Farmers Union and Chairman of the Board, National Farmers Union, accompanied by Blue A. Carlsenson, Assistant Legislative Director, National Farmers Union); *id.* at 710-11 (letter of Herchel D. Newsom, Master, National Grange, read into record by William Proxmire, Chairman, Subcommittee on Financial Institutions).

29. *See id.* at 399-403 (statement of Douglas Hewitt, Executive Secretary, Farm and Industrial Equipment Institute).

credit transactions.<sup>30</sup> Congress ignored those arguments and included agricultural credit of twenty-five thousand dollars or less, and all agricultural credit involving the purchase of land including a residence, in the scope of the law, which was passed by both houses of Congress on May 29, 1968.<sup>31</sup>

## 2. *The National Commission on Consumer Finance*

This error was compounded when the National Conference of Commissioners of Uniform State Laws (NCCUSL) approved the Uniform Consumer Credit Code (UCCC) on August 1, 1968.<sup>32</sup> The UCCC included agricultural credit of twenty-five thousand dollars or less in the definition of "consumer loan" and "consumer credit sale," subjecting agricultural credit to not only consumer credit disclosure requirements but also to all other limitations of the UCCC.<sup>33</sup> Those limitations include licensing,<sup>34</sup> limits on rates and charges,<sup>35</sup> and imposing limitations of insurance<sup>36</sup> and collection practices.<sup>37</sup> Fourteen states, including Iowa and Wisconsin, then adopted laws modeled after the UCCC,<sup>38</sup> and nine of those states, also including Iowa and Wisconsin, included agricultural credit under that regulatory scheme.<sup>39</sup>

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30. *See id.* at 403 (statement of Douglas Hewitt, Executive Secretary, Farm and Industrial Equipment Institute).

31. *See* Consumer Credit Protection Act, of 1968, Pub. L. No. 90-321, § 104(3), 82 Stat. 146, 147 (1969).

32. UNIF. CONSUMER CREDIT CODE (1968), 7 U.L.A. 475 (1997).

33. *Id.* §§ 2.104, 3.104, 7 U.L.A. at 523, 609.

34. *See id.* §§ 3.502-.506, 7 U.L.A. at 650-56.

35. *See id.* §§ 2.201-.210, 3.201-.210, 7 U.L.A. at 533-54, 615-28.

36. *See id.* §§ 4.101-.304, 7 U.L.A. at 667-85.

37. *See id.* §§ 5.101-.302, 7 U.L.A. at 685-709.

38. *See* ALA. CODE § 5-19-1(2) (1996); COLO. REV. STAT. § 5-2-104(1)(C) (1981); IDAHO CODE § 28-31-201 (1996) (repealed 1983); IND. CODE ANN. § 24-4.5-1-301(6) (Michie 1996); IOWA CODE § 537.1301(12) (1997); KAN. STAT. ANN. § 16A-1-301(10)(iii) (1998); LA. CIV. CODE ANN. art. 9:3512(7) (West 1997); ME. REV. STAT. ANN. tit. 9A, § 1-301(11)(A)(iii) (West 1997); OKLA. STAT. tit. 14A, § 2-104(1)(c) (1996); S.C. CODE ANN. § 37-2-104(1)(c) (Law. Co-op. 1989); UTAH CODE ANN. § 70C-1-201 (1997); W. VA. CODE § 46A-1-104 (1996); WIS. STAT. ANN. §§ 422.101-427.105 (West 1998); WYO. STAT. ANN. § 40-14-204(a)(iii) (Michie 1993).

39. *See* ALA. CODE § 5-19-1(2); COLO. REV. STAT. § 5-2-104(1)(C); IND. CODE ANN. § 24-4.5-1-301(6); IOWA CODE § 537.1301(12)(a)(3); LA. CIV. CODE ANN. art. 9:3512(7); ME. REV. STAT. ANN. tit. 9A, § 1-301(11)(A)(iii); OKLA. STAT. tit. 14A, § 2-104(1)(c); W. VA. CODE ANN. § 46A-1-104; WIS. STAT. ANN. §§ 422.101-427.105.

## E. *The Second De-regulation of Agricultural Credit*

### 1. *Federal and State Legislative Changes*

In 1970, the error of applying consumer credit disclosure rules to agricultural credit was becoming apparent. The Federal Reserve Board recommended, in its annual report to Congress, that all agricultural credit over twenty-five thousand dollars be exempted from the disclosure requirements, regardless of whether it was secured by residential real estate.<sup>40</sup>

The National Commission on Consumer Finance, created by the same legislation that created the federal Truth-in-Lending law, briefly addressed agricultural credit in its 1972 report to Congress.<sup>41</sup> It recommended that agricultural credit of twenty-five thousand dollars or less be subject to the same disclosure requirements as consumer credit to "retain the benefits of disclosure for small farmers but eliminate possible hindrances to transactions involving more sophisticated borrowers."<sup>42</sup> However, it did not recommend that any other consumer credit regulation be applied to agricultural credit.<sup>43</sup> NCCUSL revised the UCCC in 1974 but still included agricultural credit in its jurisdiction.<sup>44</sup>

In 1977, the largest farm organization, the American Farm Bureau Federation, with approximately 2,600,000 members, ended its silence on the issue and proposed that agricultural credit be exempted from the Truth-in-Lending law.<sup>45</sup> The National Grange changed its position to support the Farm Bureau,<sup>46</sup> and even the Federal Trade Commission and the National Consumer League supported exempting agricultural credit from the federal Truth-in-Lending law.<sup>47</sup> Only the National Farmers Union defended the application of that law to agricultural credit.<sup>48</sup>

40. See NATIONAL COMM'N ON CONSUMER FIN., CONSUMER CREDIT IN THE U.S. 187 (1972).

41. See *id.*

42. *Id.*

43. See *id.* at 187-88.

44. See UNIF. CONSUMER CREDIT CODE § 3.307 (1974), 7A U.L.A. 121-22 (1985).

45. See *Simplify and Reform the Truth in Lending Act: Hearings on S. 1312, S. 1501, S. 1653 Before the Subcomm. on Consumer Affairs of the Senate Comm. on Banking, Housing, and Urban Affairs*, 95th Cong. 854 (1977) [hereinafter *Simplify and Reform the Truth in Lending Act*] (statement of the American Farm Bureau Federation).

46. See *Truth in Lending - 1967*, *supra* note 26, at 710-11 (letter from Herschel D. Newsom, Master, National Grange).

47. See *id.* at 24 (letter from John E. Horne, Federal Trade Commission). See *id.* at 598 (statement of Sarah H. Newman, General Secretary, National Consumer's League).

48. See *Simplify and Reform the Truth in Lending Act*, *supra* note 45 at 425-28 (statement of Rueben Johnson, Director of Legislative Services, National Farmers Union). The U.S. League of Savings Associations and the American Farm Bureau both opposed the application of the Truth-in-Lending Act to agricultural credit. See *id.* at 528-30, 854-57 (statement of Gerald Levy, the U.S.

In 1979, legislation was introduced and later enacted to exempt agricultural credit from the federal Truth-in-Lending law.<sup>49</sup> The exemption of agricultural credit from the federal law left NCCUSL's UCCC as the only impetus for the regulation of agricultural credit in consumer credit laws. Historically, NCCUSL has been dominated by law professors, whose lives are enmeshed in theoretical issues of law instead of its practical effects. This may have caused them to follow the initial lead of Congress and include agricultural credit in the UCCC.

With the exception of West Virginia, all fourteen states that adopted credit laws modeled after the UCCC have now modified that law to exclude agricultural credit. The dates that those states exempted agricultural credit from their version of the UCCC are as follows:

- 1971 Wyoming adopted the UCCC,<sup>50</sup> but exempted agricultural credit<sup>51</sup>
- 1974 Kansas adopted the UCCC<sup>52</sup>, but exempted agricultural credit<sup>53</sup>
- 1975 South Carolina adopted the UCCC,<sup>54</sup> but exempted agricultural credit<sup>55</sup>
- 1980 Iowa exempted agricultural credit from its UCCC (originally adopted in 1974)<sup>56</sup>
- 1981 Colorado exempted agricultural credit from its UCCC<sup>57</sup> (originally adopted in 1971)<sup>58</sup>; Maine exempted agricultural credit from its UCCC<sup>59</sup> (originally adopted in 1974)<sup>60</sup>
- 1982 Oklahoma exempted agricultural credit from its UCCC (originally adopted in 1969)<sup>61</sup>

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League of Savings Associations, and statement of the American Farm Bureau Federation).

49. See S. 108, 96th Cong. (1979); Truth in Lending Simplification and Reform Act, Pub. L. No. 96-221, 94 Stat. 168 (1981).

50. See WYO. STAT. ANN. § 1-1-1 (Michie 1997).

51. See *id.* § 40-14-121(a)(iv).

52. KAN. STAT. ANN. § 16a-1-101 (1995).

53. See *id.* § 16a-1-301(10)(a)(iii).

54. See S.C. CODE ANN. § 37-1-101 (Law. Co-op. 1997).

55. See *id.* § 37-1-202(8).

56. See IOWA CODE § 537.1301(12)(a)(3) (1997).

57. See COLO. REV. STAT. § 5-2-104(1)(d) (1998).

58. See *id.* § 5-1-101.

59. ME. REV. STAT. ANN. tit. 9A, § 1-202(1) (West 1997).

60. See *id.* tit. 9A, § 1-101.

61. See OKLA. STAT. ANN. tit. 14A, § 2-104(1)(c) (West 1996).



- 1983 Indiana did not specifically include agricultural credit from its UCCC (originally adopted in 1971)<sup>62</sup>; Idaho adopted the UCCC,<sup>63</sup> but exempted agricultural credit<sup>64</sup>
- 1985 Utah adopted the UCCC,<sup>65</sup> but exempted agricultural credit<sup>66</sup>
- 1990 Louisiana exempted agricultural credit from its UCCC<sup>67</sup>
- 1996 Alabama exempted agricultural credit from its UCCC<sup>68</sup>
- 1998 Wisconsin exempted agricultural credit from its Consumer Act<sup>69</sup>

By 1982, only the following five states had allowed agricultural credit to remain within their UCCC: Alabama, Indiana, Louisiana, West Virginia, and Wisconsin.<sup>70</sup> The Truth in Lending changes became effective in 1981, exempting agricultural credit from the federal Truth in Lending law.<sup>71</sup>

## 2. *The Rationale for the Second De-regulation*

In Iowa, the Farm Bureau, banks, retailers, and grain elevators supported the successful 1974 lobbying effort to exempt agricultural credit from the Iowa Consumer Credit Code.<sup>72</sup> The arguments presented to the Iowa legislature included:

Farmers are sophisticated business persons;<sup>73</sup>

The average assets of an Iowa farmer (in excess of \$1 million at that time) significantly exceed the assets of the typical small business;<sup>74</sup>

Consumer disclosure and notice requirements create a substantial compliance burden for agricultural credit;<sup>75</sup>

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62. See IND. CODE ANN. § 24-4.5-1-301(6) (Michie 1996).

63. See IDAHO CODE § 28-41-101 (Michie 1996).

64. See *id.* § 28-41-301(12)(a).

65. See UTAH CODE ANN. § 70C-1-101 (1997).

66. See UTAH CODE ANN. § 70C-1-202(2)(a) (1997).

67. See LA. CIV. CODE ANN. art. 9:3512(7) (West 1997).

68. See ALA. CODE § 5-19-1(2) (1996).

69. See WIS. STAT. ANN. § 422.201(12) (West 1998).

70. See ALA. CODE § 5-19-1(2) (1996); IND. CODE ANN. § 24-4.5-1-301(6) (Michie 1996); LA. CIV. CODE ANN. art. 9:3512(7) (West 1997); W. VA. CODE § 46A-2-105 (1996); WIS. STAT. ANN. §§ 422.101-427.105 (West 1998).

71. See Truth in Lending Simplification and Reform Act, Pub. L. No. 96-221, § 603(c), 94 Stat. 168, 169 (1981).

72. Telephone interview with George Wallace, Former Professor, University of Iowa College of Law, and presently Partner, Eckert, Seamons, Cherin & Mellet in Washington, D.C. (Feb. 21, 1997).

73. See *id.*

74. See *id.*

75. See *id.*

The irregular income stream of farmers (e.g., borrow in the spring and repay in the fall) does not fit with consumer credit restrictions, which are often based on monthly payments ("like fitting a round peg in a square hole");<sup>76</sup>

Including agricultural credit with consumer credit regulation is paternalistic, protecting farmers who do not need, and do not want, to be protected.<sup>77</sup>

In addition, statements that were made to Congressional committees in 1977 included:

"The Utah farmers have told me that they neither want nor need this so-called protection . . . ."<sup>78</sup>

"We see no reason to afford greater protection to farmers than to other small businesses."<sup>79</sup>

"[T]he basic nature of agricultural loans. [sic] Farming requires capital needs at a level of sophistication for which we believe that truth in lending was never intended, was never suited, and to which it ought no longer to apply."<sup>80</sup>

"To compare agribusiness transactions to consumer installment loans just doesn't make sense."<sup>81</sup>

"The present law, as written, places the farmer borrowing less than \$25,000 on the same status with a consumer buying a refrigerator or automobile for his family. This is not realistic. Farming is big business and our borrowers are educated people. . . . Many resent this distinction and see it in the old attitude that farmers, while good with the earth, are not capable of making sound business decisions."<sup>82</sup>

"I think it may be that we can make a very strong case, Mr. Chairman, against any kind of coverage in truth in lending for farm transactions."<sup>83</sup>

76. *See id.*

77. *See id.*

78. *Simplify and Reform the Truth in Lending Act*, *supra* note 45, at 127 (statement of Senator Jake Garn, R-Utah).

79. *Id.* at 164 (statement of Thomas W. Taylor, Associate Deputy Comptroller of the Currency for Consumer Affairs).

80. *Id.* at 429 (statement of Glenn E. Heitz, President, Federal Land Bank of St. Louis, on behalf of the Farm Credit System).

81. *Id.* at 486 (statement of Byron Berg, Farmer-Director of the Product Credit Association of Dodgeville, Wisconsin).

82. *Id.* at 480 (statement of William S. Jackson, Farm Credit Board of Baltimore).

83. *Id.* at 468 (statement of Senator William Proxmire, D-Wisconsin, author of 1968 Truth-in-Lending Act).

The statement submitted by the National Farm and Power Equipment Dealers Association noted that agricultural credit was never included in the federal Fair Credit Reporting Act, Fair Credit Billing Act, the Fair Debt Collection Practices Act and other consumer credit laws enacted after the Truth-in-Lending law, and that agricultural credit was classified as business credit in the federal Equal Credit Opportunity Act.<sup>84</sup> The Senate Committee report that accompanied the successful 1979 legislation stated “[i]t is the committee’s belief that because agricultural credit is essentially commercial in nature, the type of protections provided by the act are unnecessary and add needless complexity.”<sup>85</sup>

In 1996, the Alabama Consumer Finance Code was amended to exclude agricultural credit.<sup>86</sup> Alabama legislators, including some who owned businesses that extended credit to farmers, were surprised to learn that agricultural credit was subject to the consumer credit law. That change to the Alabama law was a “non-issue.”<sup>87</sup> The debate on the 1998 amendments to the Wisconsin Consumer Act to exclude agricultural credit focused on a unique provision of that law that prohibits self-help repossession by a secured creditor upon default.<sup>88</sup> A compromise amendment that allowed the legislation to become law related to retaining limitations on agricultural debt collection practices.<sup>89</sup>

In Wisconsin and West Virginia, the last states to regulate agricultural credit under a UCCC-type law, the fallacy of subjecting that credit to consumer credit restrictions was evident in the piecemeal amendments of those laws to reduce the burden on agricultural credit.<sup>90</sup> Those amendments included allowing flexible repayment schedules, reducing security interest restrictions, establishing late charges, and allowing additional insurance products.<sup>91</sup> Except in West Virginia, the regulation of agricultural credit with consumer credit now occurs only in isolated instances in state law and often appears to be the result of a legislative accident or oversight, and not the result of a need to protect agricultural borrowers.

84. See *id.* at 901-02 (statement of National Farm and Power Equipment Dealers Association).

85. S. REP. NO. 96-368, at 24 (1980), reprinted in 1980 U.S.C.C.A.N. 236, 259.

86. See ALA. CODE § 5-19-1(2) (1996).

87. See Telephone Interview with Maurice Shevin, Partner, Simote & Perrott, Birmingham, Alabama (Feb. 21, 1997).

88. See Notes of the Author of the Wisconsin Senate Agriculture and Environmental Resources Committee and the Joint Finance Committee from the March 18, 1998 Hearings on Assembly Bill 329, later re-designated as A.3 (on file with *Drake Journal of Agricultural Law*).

89. See *id.*

90. See W. VA. CODE § 46A-2-105 (1996) (repayment schedules); *id.* § 46A-2-107 (security interests); WIS. STAT. ANN. §§ 422.203, .413, 425.105 (West 1998) (default and late charges); *id.* § 422.402 (West 1998); *id.* §§ 422.417-.418; *id.* §§ 424.208, .301 (insurance).

91. See W. VA. CODE § 46A-2-105 (repayment schedules); *id.* § 46A-2-107 (security interests); WIS. STAT. ANN. §§ 422.203, .413, 425.105 (West 1998) (default and late charges); *id.* § 422.402; *id.* § 422.417-.418; *id.* §§ 424.208, 424.301 (West 1998) (insurance).

The error in judgment made by Congress and NCCUSL in 1968 now only affects West Virginia. This state is in need of an infusion of capital to revitalize the agricultural sector of its economy. It is time to amend that law to conform to economic reality and to the laws of the other states.

### III. HOW DO THE STATES REGULATE AGRICULTURAL CREDIT TODAY?

As a general rule, states classify agricultural credit as commercial credit, and all consumer credit laws do not apply to agricultural credit.<sup>92</sup> As noted above, only West Virginia subjects agricultural credit to comprehensive regulation.<sup>93</sup> While generally exempting agricultural credit from governmental regulation, other states impose almost random limitations and requirements.<sup>94</sup> West Virginia includes agricultural credit in the form of a UCCC-type law in its Consumer Credit and Protection Act.<sup>95</sup>

There are a few states that specifically include agricultural credit in their sales finance law. North Carolina includes agricultural credit of twenty-five thousand dollars or less within the purview of its Retail Installment Sales Act.<sup>96</sup> Similarly, South Dakota includes credit for farm tractors and farm machinery in its Motor Vehicle Retail and Installment Sales Act.<sup>97</sup>

Several states specifically include agricultural credit in their interest rate limit or disclosure requirement. In particular, California includes limits on certain agricultural credit card transactions in its Song Beverly Credit Card Act of 1971.<sup>98</sup> Illinois makes agricultural credit subject to disclosure requirements in its Retail Installment Sales Act.<sup>99</sup> South Carolina limits its interest to eighteen percent in its Agricultural Loans Under Twenty-Five Thousand Dollars law.<sup>100</sup>

Some states "inadvertently" regulated some agricultural credit in sales finance law when they omitted the traditional personal, family, or household use limitation. Montana includes all sales finance of "chattels personal" in its Montana Retail Installment Sales Act.<sup>101</sup> In addition, Nebraska includes all sales finance in its Nebraska Installment Sales Act.<sup>102</sup>

Furthermore, some states have included self-propelled off-road agricultural

92. See D.C. CODE ANN. § 28-3814 (1996).

93. See W. VA. CODE §§ 46A-1-101 to -8-102 (1996).

94. The state statutes cited are examples only and are not intended to be an exhaustive listing of applicable state statutes.

95. See W. VA. CODE §§ 46A-1-101 to -8-101 (1996).

96. See N.C. GEN. STAT. § 25A (1997).

97. See S.D. CODIFIED LAWS §§ 54-7-1 to -48 (Michie 1990).

98. See CAL. CIVIL CODE §§ 1747.01-1748.22 (West 1998).

99. See 815 ILL. COMP. STAT. ANN. 405/1-33 (West 1993).

100. See S.C. CODE ANN. § 37-10-104 (Law. Co-op. 1985).

101. See MONT. CODE ANN. §§ 31-1-201 to -243 (1997).

102. See NEB. REV. STAT. ANN. §§ 45-334 to -353 (Michie 1995).

use equipment in the definition of "motor vehicle" of a motor vehicle sales finance law. For example, in Illinois, the definition of "motor vehicle" includes self-propelled vehicles<sup>103</sup> but does not include "farm equipment" in the Illinois Motor Vehicle Retail Installment Sales Act.<sup>104</sup>

Finally a few states have adopted collection practice limitations that apply to agricultural credit. In particular, the District of Columbia limits collection practices of agricultural debts.<sup>105</sup> Louisiana limits collection practices of all debts.<sup>106</sup> Similarly, Wisconsin limits collection practices of consumer and agricultural debts.<sup>107</sup>

#### IV. CONCLUSION: THE CONFLICTING POLICY GOALS OF AGRICULTURAL CREDIT REGULATION

The repeated increases and decreases in agricultural credit regulation appear not to be tied to economic cycles of agriculture, but to the public perception of the need to preserve the "family farm." In the early 1970s, unprecedented agricultural prosperity was accompanied by an expansion of the state regulation of agricultural credit.<sup>108</sup> In the early 1980s, agricultural credit was dropped from the credit laws of many states and the federal government, while the agricultural economy hit a historic low.<sup>109</sup>

Typically, the rationale for imposing restrictions on agricultural credit, and for opposing the repeal of those restrictions, is the protection of the "family farm." Yet, the shotgun approach of comprehensive state regulation of agricultural credit seems to have had no effect on preservation of the family farm, and may have limited access to credit. This can be contrasted to specifically targeted family farm legislation, which has been perceived as successfully protecting family farms. Notable examples of this successful targeted legislation are Chapter 12 of the U.S. Bankruptcy Code,<sup>110</sup> the Iowa Farm mediation law,<sup>111</sup> and the Iowa limitations of the corporate ownership of agricultural land.<sup>112</sup>

The lesson to be learned is that specific agricultural problems need targeted legislative remedies which actually address those problems. Legislative remedies that are not targeted at those problems have unintended negative effects. The best

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103. See 625 ILL. COMP. STAT. 5/1-146 (West 1993).

104. See 815 ILL. COMP. STAT. 375/2.1 (West 1993).

105. See D.C. CODE ANN. 28-3814 (1996).

106. See LA. REV. STAT. ANN. § 9:3562 (West 1997).

107. See WIS. STAT. ANN. § 302 (West 1997).

108. See NEIL E. HARL, *THE FARM DEBT CRISIS OF THE 1980s*, at 24 (1990).

109. See *id.*

110. See 11 U.S.C. §§ 1201-1231 (1994).

111. See IOWA CODE §§ 654B.1-.11 (1997).

112. See *id.* §§ 9H.1-.15.

example of this may be the constriction of agricultural credit by subjecting it to ill-fitting consumer credit laws.