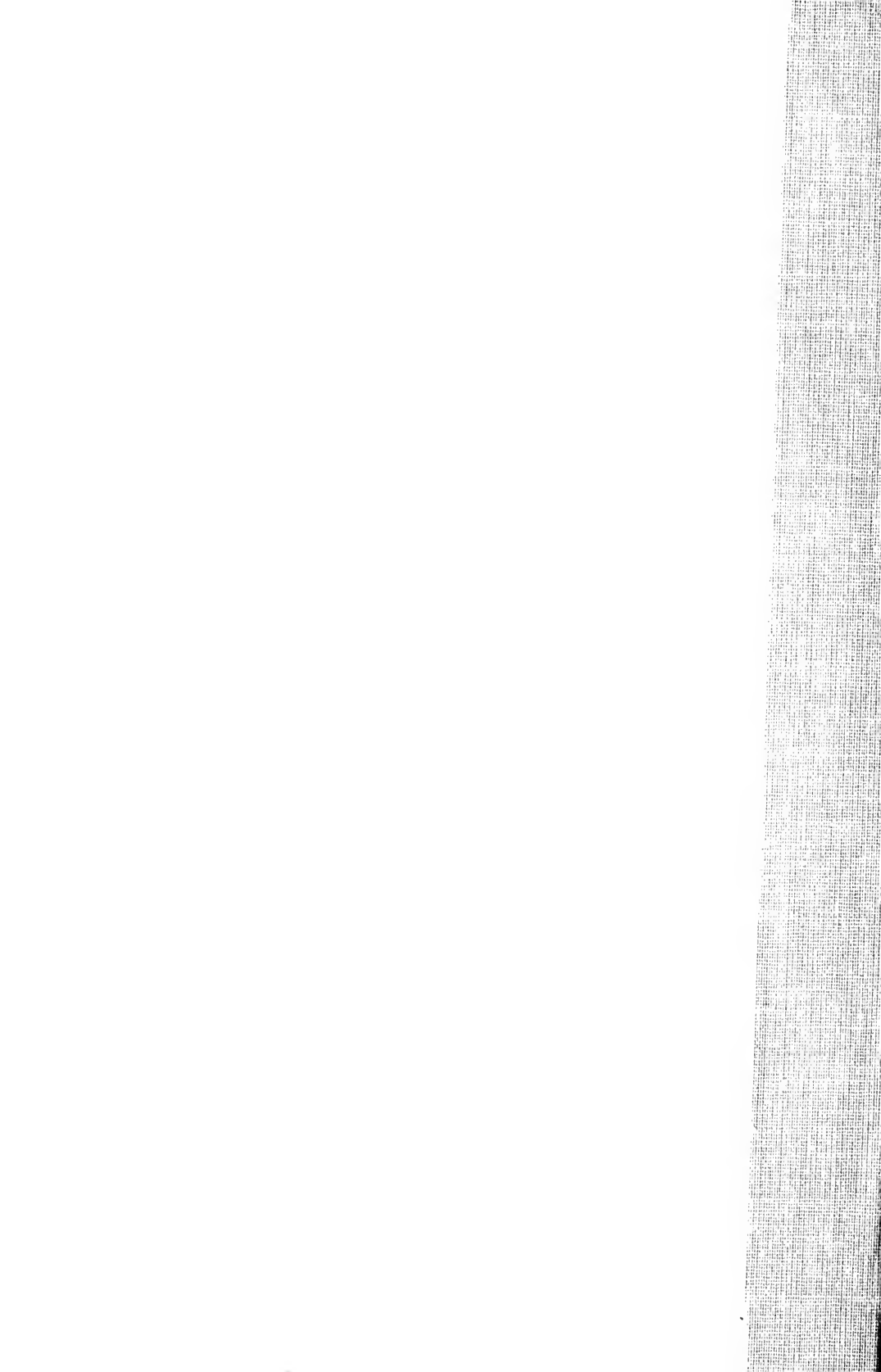
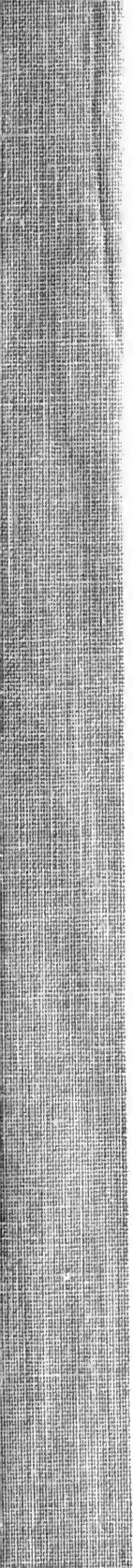


10.11.19







TE OF LABOR AND INDUSTRIAL RELATIONS

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**IGNMENT, GARNISHMENT,**

**AND CONSUMER CREDIT**

**IN ILLINOIS**

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UNIVERSITY OF ILLINOIS

**BULLETIN**

## EDITORIAL NOTE

The Institute of Labor and Industrial Relations was established in 1946 to "inquire faithfully, honestly, and impartially into labor-management problems of all types, and secure the facts which will lay the foundation for future progress in the whole field of labor relations."

The Institute seeks to serve all the people of Illinois by promoting general understanding of our social and economic problems, as well as by providing specific services to groups directly concerned with labor and industrial relations.

The Bulletin series is designed to implement these aims by periodically presenting information and ideas on subjects of interest to persons active in the field of labor and industrial relations. While no effort is made to treat the topics exhaustively, an attempt is made to answer questions raised about the subjects under discussion. The presentation is nontechnical for general and popular use.

Additional copies of this Bulletin and others listed below are available for distribution.

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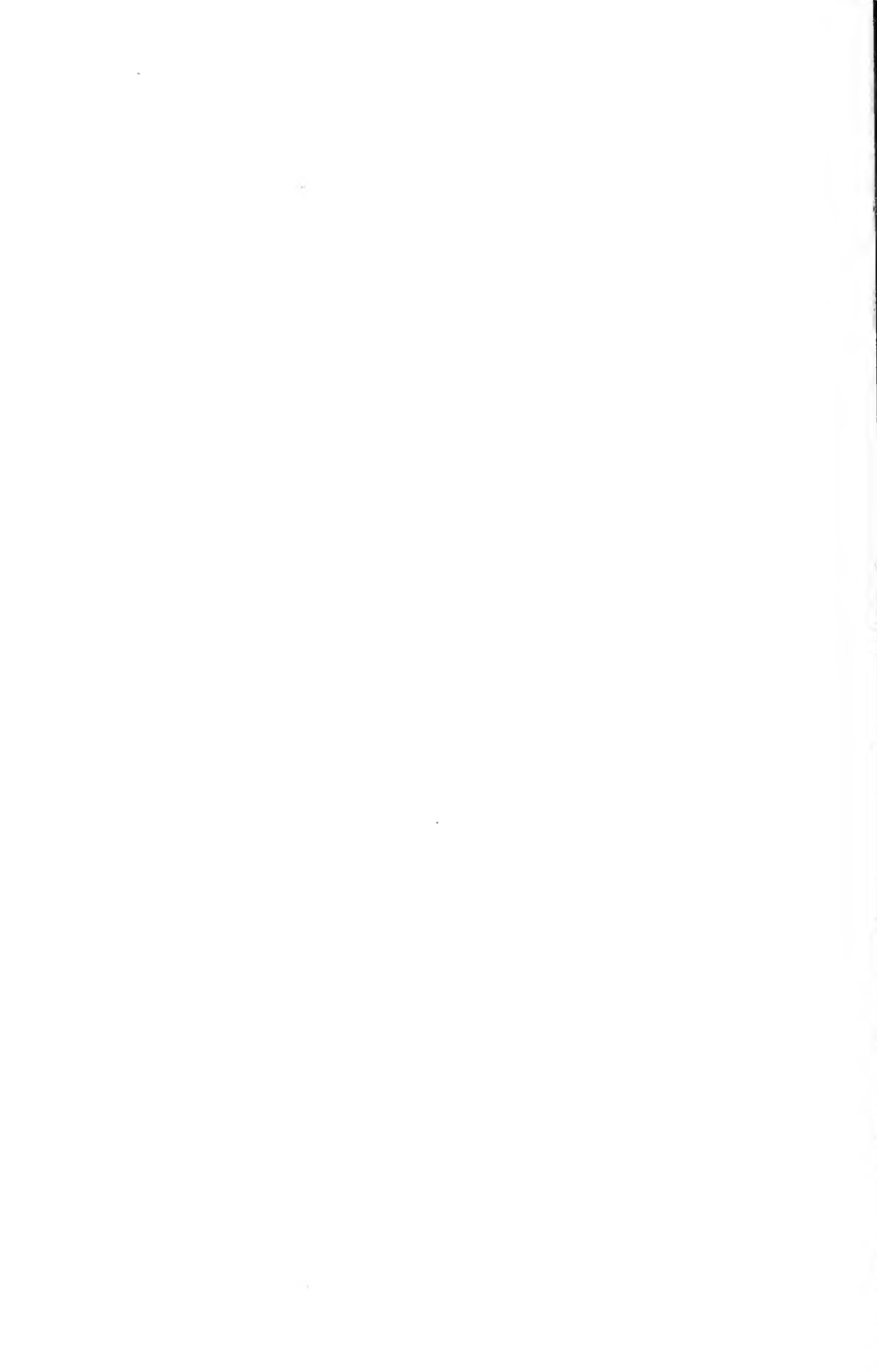
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**ASSIGNMENT, GARNISHMENT,  
AND CONSUMER CREDIT  
IN ILLINOIS**

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BY FRANCIS M. RUSH, JR.





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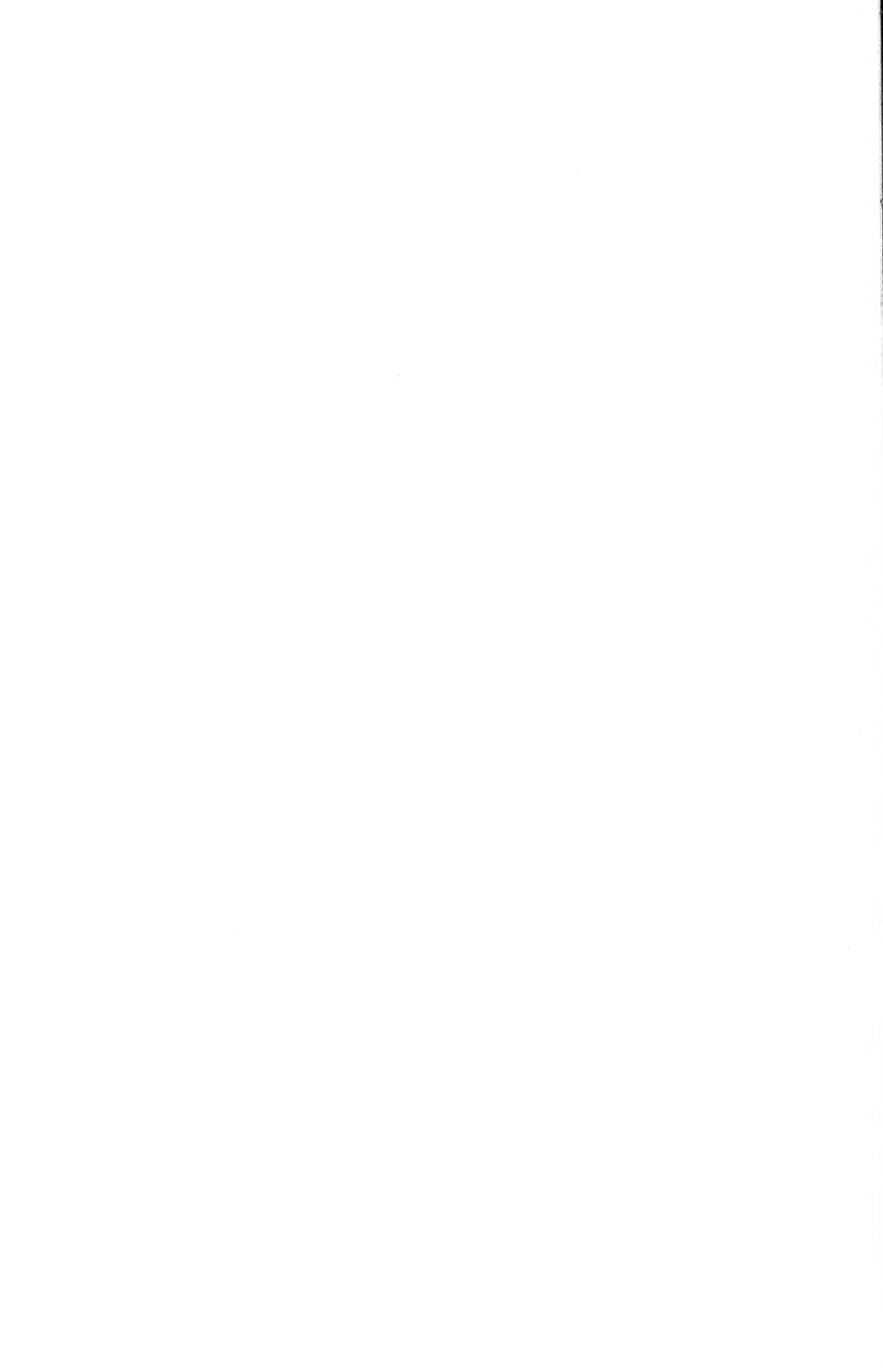
## Introduction

A *wage assignment* is a contract which a worker gives to a creditor as a form of security for a loan or for the purchase of goods on credit. It provides that the creditor can take part of a worker's wage directly from his employer if the loan is not repaid when due.

A *wage garnishment* is a court order directing an employer to pay part of a worker's wages to a creditor. The creditor must show to a court's satisfaction that the worker owes him some money, that the worker has not paid him back on time, and that to take the worker's wages directly from the employer is the only way to collect the debt.

In either case, the creditor may be a store which has sold the worker goods on credit, it may be a finance company which has loaned him money, or it may be a credit union or any other person or firm which has made a cash loan to the worker.

Legislatures in 41 states have enacted laws permitting a worker to assign his future wages to a creditor. Forty-seven states and the District of Columbia have laws allowing creditors to garnish a worker's wages. Illinois has had a wage assignment law since 1935. The State garnishment law was first enacted in 1872 and was last amended in 1957. (See Tables 3 and 4 for legislation in other states.)



## The Growth of Consumer Credit

Extension of credit to consumers with small incomes has been a comparatively recent development. The earlier belief was that a policy of "cash on the barrelhead" was necessary for sound personal economy. Credit was extended only to consumers with large incomes so that they might buy expensive durable goods with a high resale value.

Consumer installment credit plans in this country developed during the nineteenth century, particularly after the Civil War, and gained wide acceptance during the 1920's.<sup>1</sup> Today a good credit rating is important to all consumers.<sup>2</sup>

Table 1 shows the amount of short- and intermediate-term credit outstanding at the end of selected years since 1916.<sup>3</sup> In 1957 American consumers were borrowing more than seven times as much money as they were in 1945, at the end of World War II, although the value of the money had decreased only 36.1 per cent.<sup>4</sup>

TABLE 1. Total U. S. Consumer Credit, 1916-1957

(Estimated amounts of short- and intermediate-term credit outstanding in billions of dollars)

END OF YEAR OR MONTH	TOTAL CONSUMER CREDIT	END OF YEAR OR MONTH	TOTAL CONSUMER CREDIT
1916.....	2.0	1949.....	17.3
1920.....	2.8	1950.....	21.4
1925.....	4.2	1951.....	22.6
1929.....	6.4	1952.....	27.4
1933.....	3.5	1953.....	31.2
1936.....	6.1	1954.....	32.3
1941.....	9.2	1955.....	38.6
1943.....	4.9	1956.....	41.9
1945.....	5.7	1957—Jan.....	40.9
1946.....	8.4	Feb.....	40.5
1947.....	11.6	Mar.....	40.5
1948.....	14.4	Apr.....	41.0

Sources: *Consumer Installment Credit—Part I*, Vol. 2, pp. 220-221; *Federal Reserve Bulletin*, Vol. 43, No. 6 (June, 1957), p. 190.

## Sources of Consumer Credit

The principal sources of consumer credit today are commercial banks, retail stores, finance companies, and credit unions. The latter three most commonly take wage assignments as security and use both wage assignments and garnishments as collection methods.

### RETAIL STORES

Although retail merchants extend most of the installment credit to consumers for the purchase of goods, they usually retain only about one-half of the contracts until the debts are repaid.<sup>5</sup> They sell the rest to banks or finance companies.<sup>6</sup>

It is difficult to say how many wage assignments are taken by retail merchants. Large companies or stores, with well established reputations, seldom take wage assignments. However, small retail merchants who offer credit to almost anyone on fairly loose terms usually will include a wage assignment agreement in a credit contract. All types of retail establishments may use garnishment proceedings to collect debts, but the small merchant probably will use them more frequently than the large firm.

Illinois law places no limit on the amount of credit a retail merchant may extend to a customer, nor does the law limit the interest rate or special fees which a merchant may charge for the use of credit.

### PERSONAL FINANCE COMPANIES

Personal finance companies in Illinois operate under the Small Loans Act, and the section of that statute dealing with wage assignments is slightly different from the law of assignments which applies to other lenders.

These companies offer cash loans at rates which are higher than those permitted for other agencies lending money. The rate of interest cannot exceed 3 per cent per month on any part of the unpaid principal balance of the loan up to \$150.00, 2 per cent per month on the part of the unpaid principal balance between \$150.00 and \$300.00, and 1 per cent per month on any part of the unpaid principal balance over \$300.00. Illinois' small loan companies can make loans in amounts up to \$800.00.

Table 2 shows the amount of lending by licensed personal finance companies in Illinois, how frequently wage assignments were the principal form of security, and how often wage assignments were used as a collection device.<sup>7</sup>

TABLE 2. Operation of Illinois Small Loan Companies, 1933-1956

(Figures in millions of dollars)

YEAR	TOTAL AMOUNT LOANED	TOTAL AMOUNT WAGE ASSIGNMENT LOANS	PERCENTAGE WAGE ASSIGNMENT LOANS BEAR TO TOTAL AMOUNT	NUMBER OF WAGE ASSIGNMENT LOANS	PERCENTAGE WAGE ASSIGNMENT LOANS BEAR TO TOTAL NUMBER	WAGE ASSIGNMENTS FILED DURING YEAR	PERCENTAGE WAGE ASSIGNMENTS FILED BEAR TO NUMBER OF WAGE ASSIGNMENT LOANS
1933	\$ 37.1	\$ 5.4	14.4	65,154	22.1	(†)	(†)
1934	45.1	6.6	14.6	83,902	22.8	(†)	(†)
1935	52.5	8.1	15.5	97,767	23.0	5,460	5.6
1936	58.9	9.1	15.5	104,423	22.5	6,649	6.4
1937	65.1	9.7	15.0	108,210	22.0	8,565	7.9
1938	63.7	9.2	14.5	103,729	21.3	10,941	10.9
1939	78.8	11.4	14.5	122,761	20.7	10,378	8.5
1940	85.8	13.7	16.0	141,276	21.9	12,170	8.6
1941	87.6	13.1	15.0	131,834	20.5	15,662	11.9
1942	70.7	12.5	17.5	128,331	23.7	17,778	13.8
1943	73.8	17.4	23.5	154,388	28.4	12,794	8.3
1944	77.8	16.4	21.0	137,113	26.2	14,381	10.5
1945	83.9	16.9	20.1	125,985	24.4	14,307	11.4
1946	106.1	31.6	29.8	216,155	34.5	12,170	5.6
1947	131.3	34.4	26.2	219,276	32.1	12,419	5.7
1948	146.5	32.7	22.3	204,627	29.6	13,037	6.4
1949	162.1	34.8	21.5	212,967	28.8	16,282	7.7
1950	182.8	41.0	22.4	235,392	29.8	15,055	6.4
1951	215.0	48.2	22.4	254,140	29.9	17,236	6.8
1952	226.8	45.9	20.2	230,564	27.3	23,518	10.2
1953	230.8	48.5	21.0	229,578	28.0	17,896	7.8
1954	242.9	54.8	22.6	245,805	29.3	23,944	9.7
1955	270.5	64.8	24.0	272,629	30.4	15,654	5.7
1956	303.0	78.4	25.9	300,252	31.3	17,607	5.9

Source: Division of Small Loans, Department of Insurance, State of Illinois. *Analysis of Reports Filed by Personal Finance Companies Licensed Under the Small Loans Act, 1933-56.*

† Statistics not available.

## **CREDIT UNIONS**

Credit unions operate as non-profit, tax-free organizations under both federal and state laws. Their interest rates are limited, by law, to 1 per cent per month on the unpaid principal balance — a rate much lower than other lending agencies normally charge.

While credit unions can and do take wage assignments, they are not bound by the restrictions of the general law. They can, for example, take an assignment of 100 per cent of a worker's wage, but they seldom do. In the case of a mass layoff at an industrial plant, the credit union located there could, under 100 per cent assignments, take the entire amount of the last checks of discharged employees who owed the credit union money. Some critics maintain that such assignments should be forbidden because they work a double hardship on the workers who have already lost their jobs. Proponents of credit unions, however, point out that such assignments are necessary to keep a credit union financially secure, and they add that occasional hardships are more than offset by the advantages which non-profit credit unions offer to workers.

## **Obtaining Credit**

The consumer can obtain credit from a number of different sources. What he should really look for is the best deal he can find to fill his needs at a particular time. To find the best deal, he should shop for credit, comparing the provisions of the various credit programs.

### **TRUE INTEREST RATE**

A consumer and his neighbor may sign credit contracts calling for 1 per cent interest on \$100.00. If their contracts are with different types of lending agencies, they may find that they are paying entirely different total interest charges. To be certain what the true interest rate is, consumers should find the answers to two important questions:

1. For what length of time is the interest rate computed?
2. Is the interest figured on the total amount or on the unpaid balance of the loan?

An interest rate of 1 per cent computed monthly is equal to a yearly interest rate of 12 per cent. However, if the monthly rate is figured only on the unpaid balance of the loan or credit purchase and payments are made in equal amounts each month, the total interest charge would be only 6½ per cent a year.



A loan at an apparent rate of 7 per cent a year may have a true rate of nearly double that figure. This is the case with loans on what is called the "discount-amortized" basis. That is, interest at 7 per cent for the full term of the loan is subtracted from the borrowed amount at the time of the loan. However, repayment of the principal in weekly or monthly installments begins at once. Thus the borrower pays interest on the full amount of the principal for the full term of the loan, although he has use of the full principal sum for only a brief period.

#### **HIDDEN CHARGES**

Some credit programs include extra charges over and above the interest. For instance, some credit agencies may charge for the investigation of a consumer's credit rating. Others may require the borrower to buy certain types of insurance, often at rates higher than the borrower would pay in the open market.

The new Illinois Retail Installment Sales Act, effective January 1, 1958, prohibits rates higher than those on file with the State Director of Insurance. The new act also permits the buyer on an installment sale to choose his own insurance company, subject to the seller's approval.<sup>8</sup>

#### **DEFAULT AND DELINQUENCY**

The consumer who signs a credit contract probably will figure his payments in his monthly family budget and will probably have every intention of making the payments on time. But an unforeseen emergency may arise, and he may find it hard — or impossible — to keep up his payments.

Before he signs a credit contract, he should find out what will happen if he cannot meet his payments. He should ask if there are any penalties for late payments. Some agencies charge for the extra work involved in handling delinquent accounts. The new Retail Installment Sales Act limits charges for late payment to 5 per cent of an installment or \$5.00, whichever is less.<sup>9</sup>

The consumer should also find out whether he must sign a wage assignment and what protection he has in case his goods are repossessed. A buyer whose goods are repossessed not only may owe the balance due on the original debt, but he also may be charged for the actual cost of repossession.

The consumer also should ask about how repossessed goods are disposed of. This is important to him since he may be required to pay the difference between the sale price of the repossessed merchandise and the amount he still owes on the installment contract.

Repossession is governed in detail under the Illinois Retail Installment Sales Act. The buyer may not waive any right of action against the seller or holder of the contract for illegal acts committed in the collection of payments or in repossession of the goods.<sup>10</sup> Neither may the buyer give the seller or holder of the contract the right to act for the buyer in collecting payments or in repossessing the goods.<sup>11</sup>

If the seller or the holder of the contract repossesses the goods for the buyer's default, the buyer may have a right to redeem the goods by paying up the amount owed under the contract and the seller's expenses in taking and storing the goods. The buyer must redeem within 10 days after the goods were repossessed.<sup>12</sup>

However, the seller can block this right to redeem by giving notice to the buyer 20 days before repossessing.<sup>13</sup> If the buyer does not or cannot redeem, the one repossessing can sell the goods at public or private sale.<sup>14</sup> After costs of the sale and the repossession are paid, the proceeds of the sale are applied on the balance due under the contract. If anything is left, it is to be turned over to the buyer.<sup>15</sup>

If the goods do not bring enough at the re-sale to meet the expenses of repossession and the balance due on the purchase price, the seller or the holder of the contract may recover the difference from the buyer. The buyer is entitled to a court determination of the reasonableness of the expenses claimed by the seller and the reasonable value of the goods when repossessed.<sup>16</sup>

Revolving or "add-on" credit schemes are used quite frequently by retail stores. Under these plans, new credit purchases are simply added to contracts drawn up for an earlier sale upon which the consumer is still making payments. If the consumer fails to make payments, *all* goods bought on the contract may be repossessed: the goods purchased initially, which may be completely paid for, as well as the newly purchased items. This type of credit plan is enjoying increasing popularity with department and sales catalog stores.

Here again, the Illinois Retail Installment Sales Act provides the buyer with a measure of protection. Any such "add-on" credit scheme has to be spelled out in detail in a written memorandum given to the buyer, describing the additional goods, the new debt total, the finance charges, and the revised installment payments. The new payments are to be credited proportionately to the various purchases so that the earlier purchases are paid off in turn.<sup>17</sup>

#### **REPAYMENT ALLOWANCES**

Because interest charges account for a large percentage of the total cost of credit purchases, the consumer will be wise to complete his pay-

ments as quickly as possible so that he can lower his interest rate. In the past some companies have refused to lower interest charges for early repayment.

Under the Illinois Retail Installment Sales Act, the buyer is entitled to a refund credit for paying up his debt in full in advance of the date due. The buyer, however, must give the holder of the contract five days' notice of his intention to pay up the debt.<sup>18</sup> The holder may be the original seller, but more likely will be a finance company or bank.

#### **GUARANTEES**

A consumer may be legally responsible for installment payments even if the merchandise he buys turns out to be defective. The buyer will best be protected by a contract including express statements warranting the goods to be free of defects. He should in no case waive his right to hold the seller for defective goods. Under the Illinois Retail Installment Sales Act, such waiver would be unenforceable in any case. However, a finance company or bank buying the contract from the seller probably cannot be held to the seller's warranties.<sup>19</sup>

#### **CREDIT INFORMATION**

Better business bureaus and legal aid bureaus may serve the consumer as sources of information about particular lenders or lending practices. Better business bureaus, however, are usually more concerned with illegal or borderline business practices than with general credit information.

The work of the legal aid bureau is largely confined to helping people with small incomes *after* they are in financial trouble. The bureaus often are hampered in their efforts to assist because adequate safeguards for consumers have not been written into the law.

Many trade unions have shown an interest in problems of consumer credit and provide information and advice to members and their wives.

### **The Illinois Wage Assignment Law<sup>20</sup>**

A general law regulating the assignment of wages in Illinois was first enacted in 1935 and last amended in 1957. However, personal finance companies operate under the Small Loans Act, and credit unions are regulated by the Credit Union Act. Both of these laws contain wage assignment provisions.

## VALIDITY OF THE WAGE ASSIGNMENT

The law provides that no assignment of wages earned or to be earned is valid unless the following conditions are met:

1. The assignment must be in writing.
2. It must be signed by the wage earner.
3. At the time it is signed, it must show the name of the employer, the amount of money loaned or the price of the goods bought on credit, the rate of interest, and the date payments are due.
4. The worker must get his money or goods *before* he signs the wage assignment or at the *same time* he signs it.
5. The worker must be given an *exact copy* of the assignment when he signs it.

TABLE 3. Wage Assignment Law Provisions<sup>a</sup>

STATE	ASSIGNMENT PERMITTED	AMOUNT OF WAGE THAT MAY BE ASSIGNED	CONSENT OF EMPLOYER REQUIRED	RECORDING WITH PUBLIC OFFICIAL REQUIRED	CONSENT OF SPOUSE REQUIRED	ASSIGNOR MUST GET COPY
Alabama	....	....	....	....	....	....
Arizona	*	10% <sup>b</sup>	....	*	*	....
Arkansas	*	....	....	*	*	....
California	*	25% <sup>c</sup>	....	*	*	....
Colorado	*	10% <sup>b</sup>	....	....	*	....
Connecticut	....	....	....	....	....	....
Delaware	*	....	....	....	....	....
D.C.	....	....	....	....	....	....
Florida	*	10%	....	....	*	....
Georgia	*	10% <sup>b</sup>	....	*	*	*
Idaho	*	....	....	....	....	....
Illinois	*	25%	....	....	....	*
Indiana	*	....	*	....	*	....
Iowa	*	10% <sup>b</sup>	....	....	*	....
Kansas	....	....	....	....	....	....
Kentucky	*	10% <sup>b</sup>	*	....	....	....
Louisiana	*	....	*	....	*	....
Maine	*	....	....	*	*	....
Maryland	*	....	....	*	*	....
Massachusetts	*	25%	*	*	*	*
Michigan	*	10% <sup>b</sup>	....	....	*	....
Minnesota	*	10% <sup>b</sup>	*	*	*	....
Mississippi	*	....	*	....	....	....
Missouri	* <sup>d</sup>	....	....	....	....	....
Montana	*	....	....	*	*	....
Nebraska	*	....	....	....	*	*
Nevada	....	....	....	....	....	....

6. The words, "WAGE ASSIGNMENT," must be printed or written on the assignment in heavy letters at least one-quarter inch high.
7. The wage assignment must not be a part of any other paper.
8. The assignment must have been made within the past three years.

**DEMAND ON AN EMPLOYER FOR A WORKER'S WAGES**

A creditor cannot present a wage assignment to an employer and demand a worker's wages unless —

1. The employee has not made his payments on time.
2. The demand shows the correct amount the employee owes.
3. The creditor shows the employer the original or photostatic copy of the assignment.

**TABLE 3. Wage Assignment Law Provisions<sup>a</sup> — (Concluded)**

STATE	ASSIGN- MENT PER- MITTED	AMOUNT OF WAGE THAT MAY BE ASSIGNED	CONSENT OF EM- PLOYER REQUIRED	RECORD- ING WITH PUBLIC OFFICIAL REQUIRED	CONSENT OF SPOUSE REQUIRED	ASSIGNOR MUST GET COPY
New Hampshire	*	....	....	*	....	....
New Jersey	*	10% <sup>b</sup>	....	....	*	....
New Mexico	*	....	....	*	*	....
New York	*	10%	....	*	....	*
North Carolina	*	....	*	....	....	....
North Dakota	....	....	....	....	....	....
Ohio	....	....	....	....	....	....
Oklahoma	*	10% <sup>b</sup>	....	....	*	....
Oregon	*	10% <sup>b</sup>	....	....	....	....
Pennsylvania	*	....	....	....	*	....
Rhode Island	*	....	....	....	....	*
South Carolina	*	....	*	....	....	....
South Dakota	....	....	....	....	....	....
Tennessee	*	10%	....	....	....	....
Texas	*	10%	....	*	*	....
Utah	*	10% <sup>b</sup>	....	....	*	....
Vermont	*	10% <sup>b</sup>	....	....	*	....
Virginia	*	25% <sup>e</sup>	*	....	....	....
Washington	*	....	*	....	*	....
West Virginia	*	25%	*	....	....	....
Wisconsin	*	10% <sup>b</sup>	....	....	*	....
Wyoming	*	....	*	*	*	....

Source: Revised statutes of various states.

<sup>a</sup> Some laws apply only to small loans by licensed personal finance companies.

<sup>b</sup> Limit applies only to small loans by licensed personal finance companies.

<sup>c</sup> Limit is 50% if assignor is not supporting family.

<sup>d</sup> Only wages already earned may be assigned.

<sup>e</sup> Between \$50 and \$75 is exempt under any circumstances for householders.

4. The employer is the same as the one named on the assignment at the time it was written and signed.

If any one of these conditions is not met, the creditor cannot enforce his demand for the worker's wages. A demand is good for only 30 days. It then must be renewed to be legally effective.

#### **25 PER CENT LIMIT**

No more than 25 per cent of a worker's wages can be collected by creditors who hold wage assignments. Even if the worker has assigned his wages to more than one creditor, no more than 25 per cent of his wages for any pay period can be collected. The creditors collect in the order in which they serve their demands on the employer.

#### **THE LAW RELATING TO PERSONAL FINANCE COMPANIES AND CREDIT UNIONS**

The wage assignment law which applies to personal finance companies is similar to the general statute. However, under the Small Loans Act, the creditor is not required to show the employer the original or photostatic copy of the assignment, the demand on the employer for the assigned wages does not have to be renewed every 30 days, and there is no provision regulating the procedure when there is more than one assignment of a worker's wages.

The Credit Union Act regulates wage assignments taken by credit unions and the restrictions of the general law do not apply.

#### **PUBLIC EMPLOYEES**

The wages or salaries of public employees in Illinois may not be assigned.

## **The Illinois Garnishment Law<sup>21</sup>**

When a worker has no property which can be taken to pay off his debts, the law allows the creditor to take property owned by the worker but held by others. The most common type of property falling in this category is wages owed by an employer to an employee. Therefore, wages are the most common type of property garnished.

#### **CONDITIONS NECESSARY FOR GARNISHMENT**

Before a worker's wages may be garnished, the following conditions must be met:

1. The creditor must prove to a court that the wage earner owes him money and the creditor has a valid judgment for the amount.

2. The court must find that the debtor has no other property which might lawfully be claimed by the creditor.

3. The employer must already owe the wage to the employee. Wages not yet earned and wages earned after the garnishment summons is served on the employer are not subject to garnishment.

4. The worker must be notified in advance unless he has signed an agreement which gives the creditor the power to "confess judgment" for him.

To make certain that the worker has no other property and that his wages therefore may be garnished, the law requires that a bailiff or officer of the court first investigate the case. The usual procedure, however, is to have the worker sign a so-called "judgment note" at the time he gets his loan. The note specifies that the worker promises to pay back the loan by a certain date and gives the attorney for the merchant or loan company authority to "confess judgment" for him, that is, the worker agrees that his wages may be garnished without his being notified first. The result is that a worker's wages may be garnished without his knowing about it in advance and without his having a chance to settle the debt by another kind of payment. As long as the Illinois law does not ban the use of judgment notes, a worker may have a hard time getting a loan without signing one.

#### **SERVICE OF GARNISHMENT DEMAND UPON THE EMPLOYER**

After a creditor has gone to court to obtain a judgment against an employee, he must serve a "Demand in Garnishment" upon the employer and the employee (unless the employee has previously confessed judgment). The demand must be for the amount of the employee's wages over and above his legal exemption (see page 21). The demand must include the name of the court giving the judgment and the date of the judgment upon which the demand is based.

A Demand in Garnishment must be served upon the employer in person or upon his superintendent, manager, cashier, general agent, or clerk. The demand served upon the employee must be delivered to him in person or to his home where it may be left with a member of his immediate family who is over 10 years of age.

When an employer receives a Demand in Garnishment, he must hold all of the employee's wages over and above the legal exemption for a period of seven days. The creditor cannot bring a suit in garnishment until at least 48 hours after the Demand in Garnishment is served. If

the creditor does not bring the garnishment suit within seven days from the service of the demand, the employer must pay the employee the withheld wages.

An employer may challenge the garnishment in court on any one of three grounds — that the employee is a minor, that the contract was fraudulent, or that the judgment is not enforceable because the debt is more than 10 years old.

The law does not prevent an employer from paying an employee his

TABLE 4. Wage Garnishment Law Provisions

STATE	GARNISHMENT OF WAGES PERMITTED	AMOUNT OF WAGE EXEMPTED FROM GARNISHMENT FOR HOUSEHOLD HEADS	PUBLIC EMPLOYEE WAGES MAY BE GARNISHED
Alabama	*	60% of wages due or to become due	*
Arizona	*	50% per month	*
Arkansas	*	60 days' pay	..
California	*	30 days' pay, but ½ if debts were for necessities or to pay debtor's employer	*
Colorado	*	60% for householders	*
Connecticut	*	\$25 per week	*
Delaware	*	90% in New Castle County; 60% in Kent and Sussex Counties when debt is for necessities and over \$50	*
D.C.	*	\$200 per month for 2 months	..
Florida	*	100%	*
Georgia	*	\$1.25 per day plus 50% of remainder	..
Idaho	*	75%, but not more than \$100	*
Illinois	*	\$40 per week	..
Indiana	*	Not more than \$25	*
Iowa	*	100% of 90 days' pay	..
Kansas	*	90% of 3 months' wages	*
Kentucky	*	90% if debtor earns less than \$75 per month; \$67.50 if he earns more than \$75 per month	*
Louisiana	*	Fixed by court	*
Maine	*	\$20 per month	..
Maryland	*	\$100	..
Massachusetts	*	\$40 per week	*
Michigan	*	60%; range from \$12-\$30 for one week pay period, \$12-\$60 for pay period of 7-16 days, \$30-\$60 for pay period over 16 days	*
Minnesota	*	50% of net wages for 30 days, but not more than \$75 per week	*
Mississippi	*	\$50 per month	*
Missouri	*	90%, with a maximum of \$300	*



wages in advance, even though the purpose of the advance payment is to avoid garnishment of the employee's wages.

#### EXEMPTION FROM GARNISHMENT

A worker who is the head of his family and living with his family is entitled to a \$40.00 a week exemption from garnishment against his wages, in addition to all regular deductions for taxes and debts he owes his employer. He must give his employer an affidavit saying that he is

TABLE 4. Wage Garnishment Law Provision — (Concluded)

STATE	GARNISHMENT OF WAGES PERMITTED	AMOUNT OF WAGE EXEMPTED FROM GARNISHMENT FOR HOUSEHOLD HEADS	PUBLIC EMPLOYEE WAGES MAY BE GARNISHED
Montana	*	45 days' pay, but ½ if debts were for necessities. 30 days' pay if debt is \$10 or less	*
Nebraska	*	90%	*
Nevada	*	30 days' earnings; but ½ if debts were for necessities	*
New Hampshire	*	\$10 per week if debt is for necessities; \$20 per week otherwise	*
New Jersey	*	All wages of less than \$48 per week	*
New Mexico	*	80% of first \$100; no exemption of earnings over \$100 or if debt is for necessities	*
New York	*	90%	.
North Carolina	*	60 days' earnings	*
North Dakota	*	\$35 per week	*
Ohio	*	80% of first \$200 and 60% of balance. Must be at least \$60	*
Oklahoma	*	75%	*
Oregon	*	\$175 per month, but ½ if debts were for necessities	*
Pennsylvania	..	.....	..
Rhode Island	*	Not more than \$30	*
South Carolina	*	100%	..
South Dakota	*	60 days' earnings	..
Tennessee	*	\$40	*
Texas	*	Current wages	..
Utah	*	No exemption	*
Vermont	*	\$10	*
Virginia	*	75%, \$100-150 per month	*
Washington	*	\$20 per week	*
West Virginia	*	80%	*
Wisconsin	*	60-85% per month, depending on number of dependents; \$100 minimum	*
Wyoming	*	50% of 60 days' earnings	*

the head of a family before he is entitled to the exemption. If he files the affidavit, his employer must pay him the \$40.00. Some early court cases ruled that an employer must "use diligence" to find whether an employee is a family head living with his family and must arrange to claim the exemption for him if this is the case.<sup>22</sup> Many large firms keep blank affidavits on hand for employees to sign if their wages are garnished. The courts have always held that the exemption clause of the Illinois garnishment law should be applied generously so as to carry out the humane purpose for which it was intended.<sup>23</sup>

An employer who pays over to the creditor wages which were exempt must pay the employee the exempted amount anyway.<sup>24</sup> But an exemption affidavit filed by an employee protects his employer against action by the creditor to collect the exempted amount.<sup>25</sup> The exemption applies even to non-residents of the State who are sued in Illinois if their wages were earned in the State.<sup>26</sup>

#### **PUBLIC EMPLOYEES**

The wages of public employees in Illinois may not be garnished.

## **Assignment and Garnishment Laws in Practice**

In order to judge the adequacy of any law, it is necessary not only to see what its provisions are, but also to look at how the law is applied and interpreted in actual situations.

#### **BEHAVIOR OF DEBTORS**

Lack of knowledge on the part of borrowers probably is the single most important hindrance to the effective application of assignment and garnishment laws. Not only are many borrowers unaware of their rights under the law, but they also do not know the provisions of the loan and credit purchase contracts which they sign.

The debtor who does not know that he is entitled to a copy of the wage assignment, or the worker who signs a blank assignment, puts himself at the mercy of the creditor. The borrower who fails to find out the true rate of interest or total interest costs may unintentionally assume debts which he is unable to pay. Many debtors do not understand that the entire unpaid balance of a loan or of an installment contract becomes due the first time they do not make a payment on the date due. Others who fail to read or do not understand the tech-

nical fine print of installment contracts put themselves at a serious disadvantage.

Even the most competent lawyer will often be unable to help the worker who has signed a blank wage assignment or given up nearly all of his rights in an installment sales contract. Unfortunately, those people who most need sound advice when they borrow money or buy on time are least able to afford such advice. In addition, they seem to be the people who are most likely to deal with unethical lenders.

Some people feel that wage assignments should not be allowed as a form of security because a creditor can take a part of a man's wages without going to court to prove his claim. They maintain that this makes it much easier to "get around" the law. Others believe that this is the only kind of security that many workers with small incomes can offer to get credit.

#### **PRACTICES OF CREDITORS**

A majority of personal finance companies, retail merchants, and other consumer credit organizations operate according to legal and ethical standards. These ethical operators do use wage assignments and garnishments to collect debts. Social problems resulting from such collections may be blamed upon the inadequacies of the law or upon the poverty or shortsightedness of the borrowers. It is a fringe of unethical operators who manage to subvert the intent of the law.

These fringe operators conduct what amount to little more than successful rackets, but the uninformed, unwary debtor seldom is in a position to challenge the legality of wage assignment or garnishment proceedings.

The most common device these questionable establishments use is the blank wage assignment. Although such assignments are clearly illegal, the debtor cannot prove that the assignment was filled in after it was signed because he was not given a copy of the assignment to which he was entitled. This practice not only permits the unethical creditor to alter the terms of the agreement but also gives him three blank wage assignments on which he may print the name of any employer. Thus the creditor is able to obtain assignment of the worker's wages on any job, although the worker may have changed jobs after signing the assignment.

Unethical lenders usually employ also such practices as high interest rates, false promises, and installment contracts which severely limit the debtor's rights. Often the merchandise is over-priced so that the seller would much prefer to force the worker to pay for it rather than to have to take it back. These practices combine to put the debtor at a distinct disadvantage.

## HANDLING OF WAGE ASSIGNMENTS AND GARNISHMENTS BY EMPLOYERS

The response of employers who are served with wage assignments or garnishment demands also has some influence upon how effectively the wage assignment and garnishment laws operate. Employer policies vary from company to company and from situation to situation.

An employer who is notified that an employee's wages are assigned should check the legality of the debt. Mistaken identity of the worker or another defect making the assignment illegal may cause trouble for both the employer and his employee. If an employer pays a creditor who has no legal claim to a worker's wages, he may have to pay the employee, too. If a part of an employee's wages is withheld during a period of confusion over the legality of an assignment, the employee and his family will suffer.

Some employers, especially in small companies or in industries where there is a high turnover of employees, make it a practice simply to withhold the entire paycheck of an employee whose wages have been assigned. They often do this because they are not sure of the provisions of the law and they want to avoid trouble with the creditor. Other employers simply do not want to be bothered with having to split checks. A few employers will fire an employee whose wages are assigned. Such steps increase the burden upon the worker and make it harder for him to repay what he owes.

In garnishment actions, too, employers may respond with such arbitrary steps, although the law is fairly explicit on what an employer should do. Some employers will accept the creditor's word that an employee does not support a family and is not entitled to the \$40.00 exemption, even though the law requires employers to honor an employee's affidavit that he is the head of a household.

Even more problems arise when an employer is served with several wage assignments or with several garnishments. Although there is no clear legal precedent, the general rule is that the claims are answered in the order that they are received by the employer.

How an employer should divide a man's wages when an assignment and garnishment are both being met is, however, an unsettled question. Some employers take out the 25 per cent for the assignment creditor first and then give the garnishment creditor the difference between the employee's exemption and the remainder. Other employers give the garnishment creditor the total amount over and above the employee's exemption and take the assignment creditor's 25 per cent out of the amount exempted from garnishment. There are other methods of dividing a worker's check among his creditors, and the employee often winds up with a very small sum. If the problem of dividing the money

is particularly difficult for the employer, he may refuse to pay either the worker or the creditors until the matter is settled in court.

## **Effect on Industrial Relations**

Some employers object to the extra expense and trouble involved in handling wage assignments and garnishments. In an effort to reduce the number of cases they must handle, they have adopted a policy of disciplining employees whose wages are assigned or garnished. These disciplinary policies have developed into a significant industrial relations problem, especially within the past few years.

### **POLICIES OF EMPLOYERS**

One employer may handle a wage assignment or garnishment as a routine matter. Another may discharge every employee whose wages are assigned or garnished. The only safe generalization which can be made is that the policies of employers vary.

The Milwaukee Association of Commerce recently completed a study of how Milwaukee County firms handle problems relating to wage garnishment.<sup>27</sup> Questionnaires were mailed to 285 firms, each of which employed 150 or more workers. Of the 149 firms answering the questions, 132 said that the wages of one or more of their employees had been garnished within the preceding 12 months. Table 5 shows the type of action which these 132 employers reported they had taken in garnishment cases.

Although the accuracy of some of the replies in this type of survey can be questioned, they do point up the great variation in employer practices. Available information about policies of Illinois employers indicates about the same policies and the same variation.<sup>28</sup>

As many companies have had to handle an increasing number of wage assignments and garnishments in recent years, they have tended to become more strict in their policies. Some employers have tried to put disciplinary provisions into their collective bargaining agreements. It is argued that employees who have debt problems are not desirable workers and that their discharge is justifiable. It is objected that the company should not be put to the time and expense involved in processing assignments and garnishments.

Experiences of firms which have tried the strict policy of dismissing

**TABLE 5. Number of Milwaukee County Firms, Classified by Action They Take When Their Employees' Wages Are Garnished**

(Some of the 132 firms surveyed gave more than one type of action for any given offense)

ACTION TAKEN	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	OTHER OFFENSE
Suggest to the employee that he see an attorney	46	12	15	8
Ask the employee to stay away from disreputable credit houses	38	17	10	9
Suggest to the employee that he see his credit union for help	32	19	7	4
Advise employee on how to budget his income	30	19	13	6
Send employee to an attorney who will handle his case under the amortization plan	8	4	10	3
Warn employee that next offense will result in his dismissal	7	14	24	12
Dismiss the employee	0	1	8	23
None	21	30	27	34

Source: Business Research Division, Milwaukee Association of Commerce.

employees have ranged from those who found they were losing many capable employees to those who found that a strict policy reduced the number of wage assignments and garnishments among their workers.

#### **LABOR UNION POLICIES**

Labor unions are showing increased interest in problems of consumer credit. Many union newspapers carry special columns with buying tips and credit advice for their members. At least one labor newspaper conducted an extended editorial campaign against garnishment of wages.<sup>29</sup>

Not all unions, however, are concerned with wage assignment and garnishment problems. Highly skilled workers, for example, are not as likely to get into serious debt as workers whose wages are lower, and their unions have shown little interest in the consumer credit problems.

Unions which are interested in the assignment and garnishment problems of their members have worked in four general areas.

1. Legislation. Union leaders feel that any law which gives greater protection to all consumers will help their members. They do not like to see hard-won wage increases eaten up by high credit charges or inadequate exemptions.

2. Education. Some unions have presented information on consumer credit problems through articles in union newspapers and magazines,

special booklets, and talks and discussions of the problem at union meetings.

3. Credit unions. Many unions have helped set up credit unions in industrial plants. Others have established credit unions of their own.

4. Collective bargaining. Unions have tried to get clauses in collective bargaining agreements that assignment or garnishment of a worker's wages will not be cause for dismissal. This has not been an easy task for at least two reasons. First, many managements maintain that they have the exclusive right to fire a worker for what they consider just cause. Second, most union members do not regard the provision as important enough to risk a strike to get it into the contract.

Many union leaders and members feel that debt problems are a personal affair of the individual and are not the concern of his employer. While they may regret that the employer must assume the added expense of processing assignments and garnishments, they feel that this is the result of the legal regulations and that the workers should not be penalized. They also believe that to fire a man because of his debts offers no solution to the problem, but only increases individual hardship.

Some union leaders also fear that if an employer is permitted to discharge a man because of a wage assignment or garnishment, he might use this as an excuse to discriminate among his employees. They point to a number of cases of this kind which have been brought before the National Labor Relations Board. The Board has ruled that an employer can fire an employee whose wages have been assigned or garnished, *if* there is no evidence of discrimination on the basis of union activity.<sup>30</sup>

## **Wage Assignment and Garnishment as a Minority Group Problem**

Wage assignment and garnishment may be primarily a minority group problem. What few statistics are available seem to indicate that a very large proportion of wage assignments and garnishments are served upon three segments of the population: Negroes, people who have moved recently from rural areas to the city, and recent immigrants from other countries, especially Mexico and Puerto Rico.<sup>31</sup>

Many such persons have never been exposed to wealth as it is displayed in the stores of large American cities. They may become

convinced that they, too, can get and enjoy many of these goods without cash — on “easy credit terms.”

Usually they are not aware of the regulations on small loans and credit buying. When a buyer does not know his rights, an unethical merchant or lender will find it fairly easy to write any kind of contract he wishes. In addition, credit terms offered to members of minority groups may be less favorable than those offered to other people.

An Illinois State Chamber of Commerce survey of 100 industrial firms indicates that employers consider wage assignments to be the most common of the several special adjustment problems of non-whites. The assignment and garnishment problems probably are related to broader social problems faced by members of minority groups. The results of the Illinois Chamber survey are shown in Table 6.

**TABLE 6. Special Problems of Non-Whites**

(47 firms which reported that their non-white employees had special problems)

TYPES OF SPECIAL PROBLEMS	NUMBER OF FIRMS REPORTING
Wage Assignments	35
Absenteeism	7
Personality Problems	7
Drinking	1

Source: Illinois State Chamber of Commerce, *Here's How Merit Employment Programs Work* (Chicago, 1956), p. 16.

## Conclusion

Wage assignment and garnishment problems go beyond the basic debtor-creditor relationship, and these broader issues certainly must be considered when new or amending legislation is proposed in the area.

Whatever the answers may be, it is certain that the State must act both to protect the consumer from unethical and illegal operators and to protect the legitimate interests of the creditors.



## Footnotes

1. Board of Governors of the Federal Reserve System, *Consumer Installment Credit*, Part I, Vol. I, "Growth and Import" (Washington: Government Printing Office, 1957), pp. 22-26.
2. The establishment of a good credit rating today may call for more than the satisfactory repayment of previous debts. Many credit bureaus include in their files such information as activity in civic and business affairs, personal domestic data, and "quality" of citizenship. This information may even be sold to business concerns as an aid in the selection of personnel.
3. For statistical purposes, the Federal Reserve System defines consumer credit as "all credit used to finance the purchase of commodities and services for personal consumption or to refinance debts originally incurred for such purposes." Real estate mortgage credit, however, is excluded as it is almost entirely long term. "Revision of Consumer Credit Statistics," *Federal Reserve Bulletin*, Vol. 39, No. 4 (April, 1953), pp. 336-354. It will be noted that these statistics are meant to indicate only the tremendous growth of consumer credit in recent times. Questions dealing with the desirability of this expansion and the need for regulation of consumer credit must be evaluated in the light of the broader and more complex problems of the effect of consumer credit on the total economy and are beyond the scope of this *Bulletin*.
4. Consumer Price Index average for all items for 1945 was 76.9, compared to 120.2 for June, 1957. (1947-49 = 100) U. S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*.
5. Board of Governors of the Federal Reserve System, *op. cit.*, p. 36. This figure does not include credit given on the purchase of automobiles of which auto dealers currently hold less than 5 per cent.
6. No matter how fraudulent the behavior of the seller may turn out to be, the debt remains perfectly legal if the bank or finance company bought it in good faith. This practice may, therefore, result in repayment problems.
7. Statistics reporting the number and amount of wage assignment loans must not be taken as absolute as they include only those loans where the wage assignment was taken as principal security. There is no way of knowing how many loans were made with wage assignments as secondary security. Figures relating to the number of wage assignments filed are also subject to a certain amount of oversimplification as it is the practice of many personal finance companies to file a wage assignment only as a warning and to withdraw the assignment if a less severe settlement can be reached.
8. Retail Installment Sales Act, Illinois Revised Statutes, 1957, Ch. 121<sup>1/2</sup>, § 227.
9. *Ibid.*, § 228.
10. *Ibid.*, § 236.
11. *Ibid.*, § 238.
12. *Ibid.*, § 246.

13. *Ibid.*, § 245.
14. *Ibid.*, § 247.
15. *Ibid.*, § 248.
16. *Ibid.*, § 249.
17. *Ibid.*, § 250.
18. *Ibid.*, § 242.
19. *Ibid.*, § 239.
20. *Illinois Revised Statutes*, 1957, Ch. 48, § 39.1-39.9.
21. *Illinois Revised Statutes*, 1957, Ch. 62.
22. *Chicago, Rock Island and Pacific Railway Co. v. Mason*, 11 Ill. App. 525 (1882); *Welker v. Hinze*, 166 Ill. App. 326 (1885).
23. *Bliss v. Smith*, 78 Ill. 359 (1875).
24. *Chicago and Alton Railroad Co. v. Ragland*, 84 Ill. 375 (1877).
25. *Chicago and Alton Railroad Co. v. Moore*, 117 Ill. App. 147 (1904).
26. *Mineral Point Railroad Co. v. Barron*, 83 Ill. 365 (1875).
27. Business Research Division, Milwaukee Association of Commerce, *A Survey of Wage Garnishments in Milwaukee County Firms* (January, 1956).
28. The author is indebted to the Illinois Manufacturer's Association for much of the information concerning the policies of Illinois employers on wage assignments and garnishments. See also articles by George Daniels in the *Chicago Daily Defender*, January 28-February 2, 1957.
29. *The Iowa Federationist*, Feb. 15, March 8, April 26, May 10, June 14, July 12, July 19, 1957.
30. *Michigan Lumber Fabricators, Inc.*, 111 NLRB No. 95 (February 10, 1955).
31. Statistics for a number of specific industrial plants which show the high proportion of wage assignments and garnishments served upon Negroes are given in Daniels, *op. cit.*, and in *Illinois Human Relations* (November-December, 1956), p. 5.



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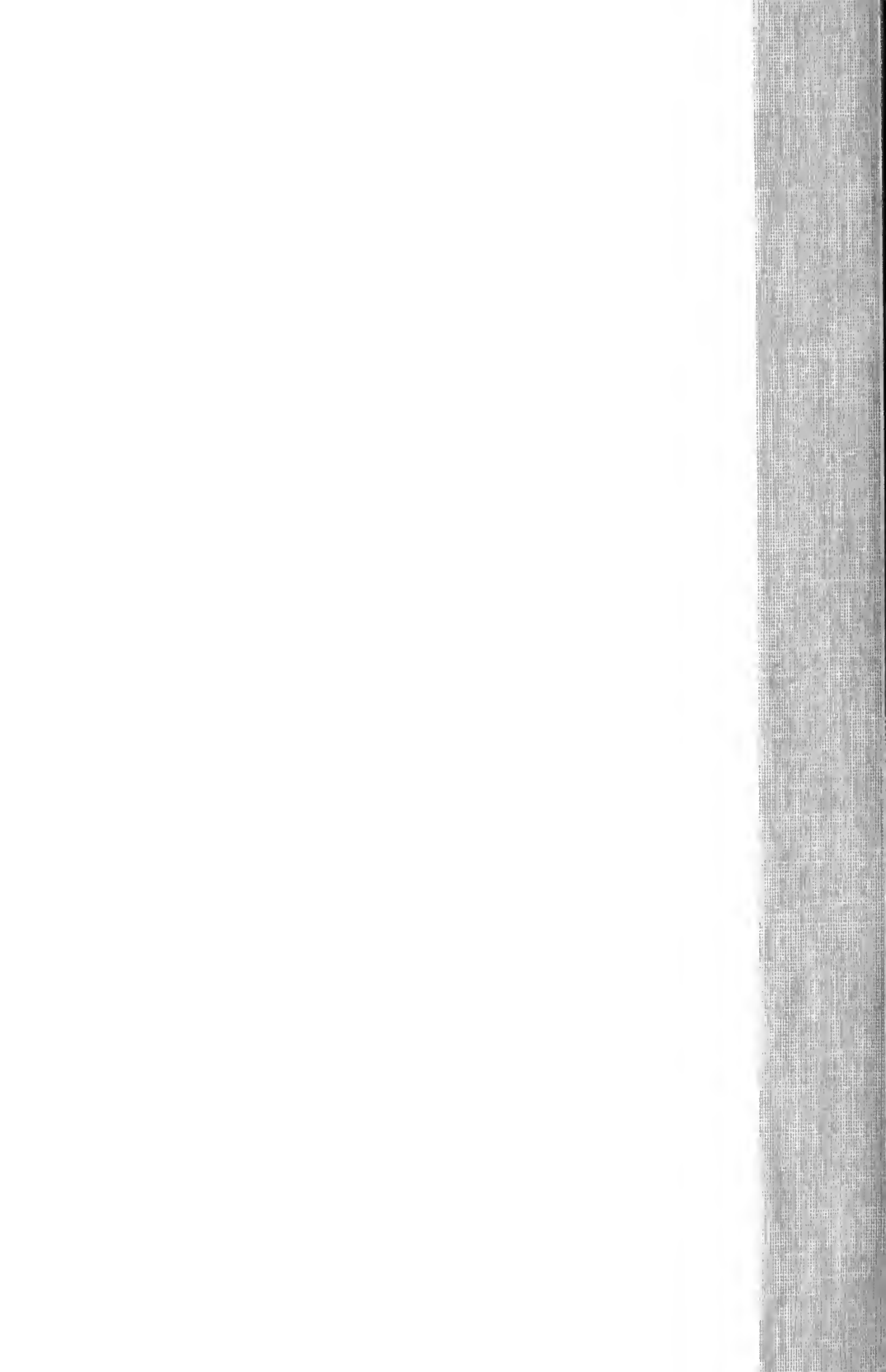
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