Table 1.

Credit Card Plans by Class of Bank

(Amounts in millions of dollars)

	All banks		National banks		State member banks		Nonmember banks	
	Number having plans	Amount outstanding	Number having plans	Amount outstanding	Number having plans	Amount outstanding	Number having plans	Amount outstanding
September 30, 1967[1/]	197	633	119	496	34	100	44	37
December 30, 1967[2/]	390	828	187	636	50	145	153	47
June 30, 1968[2/]	416	953	219	731	64	170	133	52
December 31, 1968[2/]	510	1,312	272	1,019	65	210	173	83
June 30, 1969[2/]	699	1,705	359	1,317	93	275	247	113

1/ Federal Reserve study, Bank Credit-Card and Check-Credit Plans, July 1968.
2/ Federal Deposit Insurance Corporation, Report of Call.

Table 2.

Bank Credit-Card and Check-Credit Plans, 1968 1/
(Amounts in millions of dollars)

	Outstandings end of month		Extended during month		Repaid during month	
	Credit card	Check credit	Credit card	Check credit	Credit card	Check credit
January	815	531	147	85	139	[illegible]
February	817	543	120	78	118	[illegible]
March	822	549	125	76	120	[illegible]
April	859	570	158	95	121	[illegible]
May	878	586	152	97	133	[illegible]
June	914	600	155	93	119	[illegible]
July	945	622	172	103	141	[illegible]
August	983	644	175	103	137	[illegible]
September	1,024	665	176	105	135	[illegible]
October	1,066	687	195	111	153	[illegible]
November	1,111	694	188	98	143	[illegible]
December	1,265	739	318	134	164	[illegible]
1969						
January	1,292	762	228	125	201	10[illegible]
February	1,321	769	190	113	161	10[illegible]
March	1,341	782	219	120	199	10[illegible]
April	1,457	814	270	147	154	11[illegible]
May	1,541	834	277	137	193	11[illegible]
June	1,631	859	299	138	209	11[illegible]
July	1,700	880	319	135	250	11[illegible]

1/ Data for reporting banks representing approximately 95 per cent of the dollar volume of bank credit-card and check-credit outstandings.

Table 3.

Bank Credit Card Plans by Federal Reserve District
All Commercial Banks
(Amounts in millions of dollars)

Federal Reserve District	September 30, 1967		December 31, 1967		June 30, 1968		December 31, 1968	
	Number offering plan	Amount outstanding	Number offering plan	Amount outstanding	Number offering plan	Amount outstanding	Number offering plan	Amount outstanding
Boston	14	21.8	16	27.9	20	36.9	21	57.5
New York	16	64.8	23	109.5	27	120.4	20	155.3
Philadelphia	6	12.3	10	11.2	12	14.0	9	25.4
Cleveland	6	26.9	14	31.2	26	36.1	48	63.7
Richmond	5	28.2	13	38.9	15	47.4	28	92.7
Atlanta	20	30.6	43	40.0	39	48.9	53	99.5
Chicago	35	126.2	86	153.2	92	153.0	107	181.6
St. Louis	10	12.3	36	22.2	39	26.2	57	52.8
Minneapolis	5	.1	25	1.8	24	1.4	11	1.0
Kansas City	6	6.4	19	10.2	15	12.3	19	32.5
Dallas	7	8.1	22	12.4	21	21.0	22	18.9
San Francisco	67	295.3	83	369.9	86	435.3	115	530.6
All districts	197	633.0	390	828.4	416	952.9	510	1,311.5

Table 4. Growth of Bank Credit Card Plans in Selected Federal Reserve Districts (Number of Banks)

Federal Reserve District 1/	Banks with Plans June 30, 1968	Banks Starting Plans July 1968 - August 1969	Percentage Increase Since June 1968
1. Boston	20	6	30
2. New York	27	22	82
3. Philadelphia	12	0	0
4. Cleveland	26	26	100
5. Richmond	15	52	346
6. Atlanta	39	75	192
7. Chicago	92	5	5
10. Kansas City	15	18	120
11. Dallas	21	16	76
12. San Francisco	86	21	24
Total: Selected Districts	353	241	68

1/ Information on new bank credit card plans started in the St. Louis (8) and Minneapolis (9) Districts was incomplete and could not be used in this tabulation.

Table 5.

Bank Practices in the Distribution of Credit Cards, By Federal Reserve District

Federal Reserve District 1/	Number of Banks Starting Plans, July, 1968-August, 1969	Use of Unsolicited Mailing	Use of Outside Lists	Use of Pre-mailers
1. Boston	6	All	None	All
2. New York	22	Virtually all	None	Most
3. Philadelphia	0	--	--	--
4. Cleveland	26	Most	Few	Most
5. Richmond	52	Virtually all	Few	Most
6. Atlanta	75	Most	Few	N.A.
7. Chicago	5	All	None	N.A.
10. Kansas City	18	Most	One	N.A.
11. Dallas	16	Most	None	Most
12. San Francisco	21	Some	None	Some

1/ Information on new bank credit card plans started in the St. Louis (8) and Minneapolis (9) Districts was incomplete and could not be used in this tabulation.

N.A. Not Available

Table 6.

Ownership of Bank Credit Cards,

June, 1969

Selected Household Characteristics	Households in Subsample		Has Bank Credit Card		Does Not Have Bank Credit Card	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
Total Responses*	1,025	100.0	258	25.2	767	74.8
Education Level						
Grade school or less	177	100.0	29	16.4	148	83.6
Some high school	224	100.0	42	18.8	182	81.2
Graduated high school	312	100.0	81	26.0	231	74.0
Some college	142	100.0	43	30.3	99	69.7
Graduated college	104	100.0	33	31.7	71	68.3
Post-graduate college	60	100.0	29	48.3	31	51.7
Income Level						
Less than $3,000	128	100.0	9	7.0	119	93.0
$3,000 - 4,999	122	100.0	22	18.0	100	82.0
$5,000 - 7,999	244	100.0	48	19.7	196	80.3
$8,000 - 9,999	170	100.0	50	29.4	120	70.6
$10,000 - 14,999	179	100.0	56	31.3	123	68.7
Over $15,000	124	100.0	55	44.4	69	55.6

Source: Preliminary results from Federal Reserve Board Survey of Consumer Awareness of Credit Costs.

*Note: Sum of the rows does not add to total row due to "no answers" to some of the specific questions.

Table 7. Credit Extended on Credit Card Plans 1/
(Amounts in millions of dollars)

	1968				1969			
	Credit extended			Cash advances as percentage of total	Credit extended			Cash advances as percentage of total
	Total	Retail purchases	Cash advances		Total	Retail purchases	Cash advances	
Jan.	147	123	24	16	228	195	33	14
Feb.	120	97	23	19	190	157	33	17
Mar.	125	102	23	18	219	181	38	17
Apr.	158	127	31	20	270	220	50	19
May	152	126	26	17	277	235	42	15
June	155	126	29	19	299	254	45	15
July	172	139	33	19	319	269	50	16
Aug.	175	141	34	19				
Sept.	176	145	31	18				
Oct.	195	163	32	16				
Nov.	188	159	29	15				
Dec.	318	275	43	14				
	2,081	1,723	358	17				

1/ Data for reporting banks which represent approximately 95 per cent of the dollar volume of bank credit-card outstandings.

Table 8.

Commercial Bank Loans Outstanding - All Commercial Banks

End of month	Billions of dollars: Total loans, net 1/	Total consumer credit	Consumer instalment credit	Credit card credit	Percentage of total loans: Total consumer credit	Consumer instalment credit	Credit card credit
September 1967	224.8	39.7	32.4	.6	17.6	14.4	0.3
December 1967	235.2	40.0	32.7	.8	17.0	13.9	0.3
June 1968	243.2	42.1	34.6	1.0	17.3	14.2	0.4
December 1968	262.6	44.9	37.0	1.3	17.1	14.1	0.5
June 1969	273.5	46.9	38.9	1.7	17.1	14.2	0.6

1/ Including valuation reserves.

Table 9.

Credit Card Plans
(Amount outstanding - In billions of dollars)

Type of Credit	December 31, 1967	June 30, 1968	December 31, 1968	June 30 1969
Bank credit cards 1/	.8	1.0	1.3	1.7
Oil companies 2/	1.0	1.1	1.2	1.3
Department store revolving credit	3.5	3.6	3.7	3.8
Retail charge accounts	r 5.9	5.3	6.5	5.6
Travel and entertainment cards 2/	.1	.1	.1	.1
All other 3/	r .2	.2	.2	.2
All types	11.5	11.3	13.0	12.7

r - revised
1/ Excludes check credit plans.
2/ Consumer portion only.
3/ Including large independent credit card firms and revolving credit accounts of nondepartment stores.

Table 10.

Credit Card Activities of Selected Interchange Systems

June 30, 1969

Type of Activity	BankAmericard	Interbank
Number of card-issuing banks	185	500
Number of agency banks	2,900	2,550
Number of merchant cardholder accounts	22.9 mil.	20.5 mil.
Number of merchant members	450,000	450,000
Amount of outstanding credit	$660 mil.	$900 mil.
Average amount outstanding per active account	$185	$180

A SUMMARY

OF THE

UNIFORM CONSUMER CREDIT CODE

PREPARED BY
NATHANIEL E. BUTLER
Educational Director

Courtesy of ALASKA RETAIL ASSOCIATION

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
1155 East 60th Street
Chicago, Illinois 60637

BOX 1727
ANCHORAGE, ALASKA
99501

PRESIDENT:
JOHN W. WALLS
BARBS FLORIST
ANCHORAGE, ALASKA

VICE PRESIDENT:
LOWELL HANSEN
CO-OP DRUG
FAIRBANKS, ALASKA

SECRETARY-EXECUTIVE DIRECTOR
DEAN EHRICH
CONRIGHTS FURNITURE & APPLIANCE
ANCHORAGE, ALASKA

BOARD OF DIRECTORS
ALASKA
RETAIL ASSOCIATION

ANCHORAGE:
S. G. "JERRY" NERLAND
NERLANDS HOME FURNISHINGS
JOHN W. WALLS
BARBS FLORISTS
J. A. MILLER
J. C. PENNEY CO., INC
KENNETH E. HIGBY
NORTHERN COMMERCIAL CO

FAIRBANKS:
LOWELL HANSEN
CO-OP DRUG
AUSTIN WARD
SACHS
LES GRAY
FOODLAND
ALTERNATE:
DOUGLAS E. HEIKEN
J. C. PENNEY CO., INC

JUNEAU:
WILLIAM FLINT
BEHRENDS DEPT. STORE
HOWIE RIDER
LYLES FURNITURE & HARDWARE

KENAI:
RONALD MALSTON
NORTHERN COMMERCIAL CO.
ALTERNATE:
AL CRUVER
ARMY-NAVY SURPLUS

NOME:
FRANK A. COUCH
NORTHERN COMMERCIAL CO.

January 31, 1970

Hon. Barry W. Jackson
Alaska State House of Representatives
Pouch V State Capitol Bldg.
Juneau, Alaska 99801

Dear Mr. Jackson:

During recent years, there has been much concern on the part of legislators regarding consumer protection. This concern is quite rightly reflected from the concern evidenced by your constituents in all segments of our society.

One of the more important subjects in this field is, of course, consumer credit; an area of our economy that has shown fantastic growth. In 1939 consumer credit outstanding totaled about Seven Billion Dollars. Today, it exceeds 113 Billion Dollars and is still growing.

Existing laws & regulations covering consumer credit are really not adequate to provide the necessary safeguards to consumers , nor are they sufficiently clear, in some respects, to insure complete understanding by the credit industry. One well thought out approach to this problem is the Uniform Consumer Credit Code, drafted by the National Conference of Commissioners on Uniform State Laws.

As you know, the Uniform Consumer Credit Code was introduced in the Alaska Senate as Senate Bill 211 in February of 1969. Our Association supports this measure and urges that you give it some study and consideration.

(over please)

We are enclosing a summary booklet on the code which, we hope, will be of aid to you. Additionally, we have prepared a comparison study which compares UCCC with existing Alaska statutes and the Federal Consumer Credit Protection Act of 1968 (Truth In Lending). Copies of this study are available from Association offices upon request.

Very Truly Yours:

DEAN EHRICH
Executive Director
272-4222

A SUMMARY

OF THE

UNIFORM CONSUMER CREDIT CODE

PREPARED BY
NATHANIEL E. BUTLER
Educational Director

Courtesy of ALASKA RETAIL ASSOCIATION

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
1155 East 60th Street
Chicago, Illinois 60637

The National Conference of Commissioners on Uniform State Laws is an organization of state appointed officials who are practicing lawyers, judges and law school professors. Customarily the governor of each state appoints three men to serve as Commissioners. The Commissioners serve without compensation. The expenses of the Conference are paid from appropriations made by the states, and when special projects are undertaken, foundations and interested groups often make contributions. The function of the Conference is to draft legislation in areas of the law where uniformity among the states is particularly desirable and offer it to the states for enactment.

THE PROBLEM

Consumer credit is treated under a variety of laws in each state today. Historically, a type of statute that has dominated the growth of consumer credit has been the simple general usury statute. These statutes, originating in this country as early as 1664, set flat 6% and 8% per annum ceilings on the rate of interest that may be charged for loans of money. In the twentieth century these ceiling rates have been unevenly increased in some states so that today the ceiling rates range from 6% to 12% per annum with one state having a 16% ceiling, one state a 21% ceiling and two states none at all. The 6% to 12% rates are below those at which legitimate creditors can extend many kinds of consumer credit. As a result, many exceptions and exemptions from usury laws have been created by courts and legislatures. In most states today general usury statutes cover only a small portion of consumer credit transactions, and this coverage is highly erratic and generally unreasoned.

Exceptions to usury statutes have come from both the courts and the legislatures. The so-called "Time Price" doctrine developed by the courts exempts from general usury statutes all sales credit purchases. This doctrine creates an enormous exception to usury statutes and is recognized in all but two of the states.

State legislatures have recognized the distinction between credit sales and direct loans and have enacted many laws regulating credit sales. Often there is one law regulating credit sales of motor vehicles, and another regulating credit sales of goods other than motor vehicles. Sometimes there are additional laws governing home improvement sales, revolving store charge accounts, and insurance premium financing. Generally these laws are limited to consumer transactions, but occasionally they have broader application. Not infrequently these laws provide different ceilings on rates that can be charged, and express the rate ceilings differently (add-on, discount, U.S. Rule, per cent per month, etc.). Often these laws treat substantially similar aspects of different credit transactions differently where no reason for the difference in treatment exists.

In addition to the exemption from usury laws for sales credit, state legislatures have enacted a number of laws permitting loans to be made at rates in excess of the usury rate. Most common are the Small Loan Laws which require the lender to be licensed and limit both the amount and length of the loan. In addition to the Small Loan Laws, many states have enacted so-called Installment Loan Laws, Industrial Loan Laws and other laws exempting from general usury statutes certain classes of lenders such as commercial banks, credit unions and savings and loan associations or a certain class of transactions such as revolving loan accounts. These laws also frequently set different rules for what are very similar aspects of the various transactions.

Finally, some states have enacted laws dealing with specific aspects of consumer credit transactions such as door-to-door sales cancellation acts, rate disclosure (truth-in-lending) acts and so forth.

Compounding the problem of the numerous laws governing the consumer credit market is the new Federal Truth-in-Lending Act which is effective July 1, 1969. It requires full disclosure of the terms of substantially all consumer credit transactions including, among other things, the rate of the credit service or loan finance charge stated in terms of an annual percentage. This law provides that if a state passes a law which requires substantially similar disclosure, the state law will apply and the control will move back from the federal to the state government.

THE UNIFORM CONSUMER CREDIT CODE — GENERALLY

The Uniform Consumer Credit Code is a balanced consumer protection law. It restructures all laws imposing maximum charges on the cost of money or credit, regulates consumer credit generally and brings substantially all consumer credit transactions under one comprehensive code. In the area of maximum charges and rate ceilings it imposes a single and standard set of maximum charges on substantially all types of consumer credit and, except in the case of extortionate charges, frees substantially all types of business credit from any maximum charge or rate ceiling. It puts all creditors extending consumer credit on substantially an equal footing so far as maximum charges and control of practices are concerned. It stimulates competition by eliminating artificial barriers to entry into the credit granting business and by requiring disclosure of the cost of the credit, both in terms of the dollar amount and in terms of an annual percentage rate. While the Uniform Consumer Credit Code sets *maximum ceilings* on rates which may be charged in consumer transactions, it relies on competition to *fix actual effective rates*. It restricts certain practices of creditors which have been shown to be particularly subject to abuse and has broad provisions to eliminate unconscionable conduct.

It is designed to secure for any state enacting it exemption from the Federal Truth-in-Lending Act.

COVERAGE

Generally, the Code applies to consumer credit transactions and excludes business transactions. The basic test is the kind of debtor involved. If the debtor is an individual, some or all of the provisions of the Code apply. If the debtor is an organization, (a corporation, partnership, trust, governmental body or the like), with one minor exception regulatory and maximum rate provisions of the Code do not apply. The non-application of the Code to organizations eliminates the major portion of all business credit from regulatory coverage.

If an individual debtor (sometimes called a sole proprietor) seeks not in excess of $25,000 of credit for a business purpose, the transaction will be covered only by the provisions of the Code relating to maximum rates and charges which can be made. In other words, the sole proprietor of a corner grocery is given maximum rate protection under the Code in transactions up to $25,000 but otherwise the transaction is unregulated.

The major concern of the Code is with consumer credit and except for the provisions on rates and maximum charges having limited applicability to non-consumer transactions, all of the Code's provisions apply only to consumer credit. Consumer credit includes and is limited to credit extended for the personal, family, household or agricultural purpose of the person to whom credit is extended.

Credit extended for agricultural purposes is included in consumer credit, but it is excluded from a number of the substantive provisions found to be unsuited to the particular characteristics of farm financing. Of course, if the debtor is not an individual, regulatory provisions of the Code do not apply.

Credit sales of homes and home mortgages entered into for a consumer purpose are covered by the maximum rate and charge limitations as well as the disclosure requirements of the Code. Transactions in which the rate of credit service or loan finance charge exceeds 10%, calculated as prescribed in the Code, are subject to all of the substantive provisions of the Code.

REGULATION OF PRACTICES

The Code takes three basic approaches to the problem of better enabling the consumer to deal with the professional creditor. First, it requires full disclosure of the cost of credit to the consumer prior to or at the time the transaction is entered into. Second, it makes illegal or severely limits certain specific practices of creditors which have been shown to be subject to abuse. Finally, it has broad provisions for attacking and eliminating unconscionable conduct.

The first approach is the requirement of complete disclosure of the terms of the credit transaction including disclosure of the cost to the debtor both in dollar amounts and in terms of an annual percentage rate. The disclosure provisions are more fully discussed below.

The second approach is to prohibit or greatly limit certain kinds of agreements and practices. In deciding what practices to prohibit or limit, the Commissioners recognized that unless there were very real and corresponding benefits to the consumer, restrictions on rights of creditors could, in fact, hurt consumers because the restrictions might result in higher costs and consequently higher rates throughout the consumer credit market. With this process of evaluating and balancing in mind, the Commissioners sought only to restrict rights and practices in which evidence of serious abuse of consumers was strong.

Among the specific restrictions the Code imposes is the prohibition of negotiable promissory notes in sales credit transactions. Closely related to this is the treatment of the buyer's waiving as to an assignee of the consumer's contract any defenses he might have against the seller. The Code offers alternative sections, either of which might be enacted. The first alternative prohibits and renders non-effective the buyer's waiving his defenses. The second alternative requires the buyer promptly to inform the assignee of any defenses which arise within three months of the sale and if he fails to do so, the assignee is freed from defenses arising during the three month period. Under the present law of most states, once the contract is assigned, the buyer must pay the finance company and try to seek his remedy from the seller. The theory of the Code's provision is that the financing institution is in a better position to guard against the seller pushing shoddy and substandard goods or services than the buyer who very likely has only a single isolated transaction with the seller.

Another practice the Code prohibits in sales credit transactions is the seeking of a deficiency judgment after goods have been repossessed if the original cash price of the goods was less than $1,000. In effect, where the cash price is less than $1,000, the Code provides that the creditor must either elect to sue on the contract or repossess the goods; he may not do both. The theory of this section is that in transactions in which the cash price is under $1,000, the right to seek a deficiency after repossession is worth little to the legitimate creditor, but it can be used abusively by the unscrupulous creditor.

The Code eliminates in sales credit the practice of the seller's taking a security interest in a houseful of furniture to secure the payment of the price of a single refrigerator or television set. Although the Code does permit taking a security interest in more than the goods sold when debts arising out of other sales are consolidated, it requires payments to be allocated so that the goods are freed from the security interest on a first in first out basis.

The Code restricts balloon payments which often have been used to push a debtor into extending and refinancing the debt. It also prohibits irrevocable assignments of earnings, garnishment proceedings prior to judgment, and confessions of judgment. It sets limits on charges which can be made on default, attorney's fees which can be collected from debtors, and the amount of a debtor's earnings subject to garnishment. It limits small loans to 25 months or 37 months when the annual rate of loan finance charge exceeds 10%. It gives buyers three days to cancel home solicitation sales and prohibits referral sales. It includes provisions on credit life insurance and credit accident and health insurance like those now in force in states which effectively regulate such insurance.

The third approach of the Code toward eliminating harmful practices

and enabling consumers to deal more effectively with creditors is contained in provisions which permit courts in proceedings commenced by the Administrator to declare any agreement or part of an agreement unconscionable and unenforceable as a whole or in part. The court is empowered to order the enforcement of the agreement in such a way as to avoid any unconscionable result. Debtors themselves and also the Administrator may bring proceedings to recover excess charges, the Administrator may himself order creditors to cease violating the Code and the Administrator may bring court proceedings to obtain injunctions against violations of the Code and against unconscionable conduct. Varying special civil and criminal penalties are provided for different kinds of violations. Studies have shown that the major part of overreaching and abuse stems from a relatively small percentage of creditors. In total effect the Code sets standards of conduct for all creditors participating in consumer credit and provides strong and effective remedies against creditors committing serious abuses without impairing the rights of legitimate creditors and without seriously raising the general cost of credit to consumers.

DISCLOSURE

The disclosure requirements of the Code are in most cases the same as those in the Federal Truth-in-Lending Act. Where they differ, the Code's provisions are more stringent.

Basically, in a credit sale the seller is required to set forth: 1) what is being sold; 2) the cash price; 3) the down payment; 4) the balance owing; 5) amount payable for registration or certificate of title fees not included in the cash price; 6) the amount of official fees and taxes; 7) a brief description of any insurance provided and, if a separate charge is made, the amount of the charge; 8) in the case of a sale of land the amount and a description of the closing costs; 9) the total amount financed; 10) the dollar amount of the credit service charge; 11) the total unpaid balance; 12) the annual rate of the credit service charge; 13) the payment schedule; 14) the charges to be made in the event of default; and 15) a description of any security interest taken.

The dollar amount of the credit service charge is not required in a land transaction if the rate of credit service charge is under 10%.

Similar disclosure is required in the case of loans, and under somewhat different mechanical requirements, in the case of revolving sale and loan accounts, and in refinancings, consolidations, and deferrals.

The percentage rate which is disclosed must be computed according to what is known as the U.S. Rule. This is the method traditionally employed in first mortgage real estate financing where payments are applied first to accrued interest and then to the reduction of principal.

The kinds of charges which may be excluded from the calculation of the rate to be disclosed are limited. Except for certain closing costs in real estate transactions involving a credit service or loan finance

charge not exceeding 10% per year, all extra charges must be included in the credit service or loan finance charge except a defined category called "additional charges". "Additional charges" are official fees and taxes, liability and casualty insurance if the buyer is told that he can choose the insurer, and life, health and accident insurance if such insurance is not a factor in the granting of the credit and the buyer is so told. If insurance charges do not meet these tests, they must be included in the credit service charge or loan finance charge. Other charges of benefit to the debtor apart from the granting of credit may be excluded from the finance charge if the Administrator has approved them.

These exceptions from the credit service and loan finance charge are the same as those in the Federal Truth-in-Lending Act. All other extra charges must be included in the credit service or loan finance charge in calculating the rate.

The theory of the disclosure requirements is that the buyer or borrower will be able to shop for credit just as he shops for other commodities. The dollar cost of having goods or money immediately rather than waiting will be clear to him. The requirements that all creditors state a rate in the same manner (in terms of an annual percentage) will permit the consumer to make meaningful comparisons and choose between alternative sources of credit and get the best deal. Looking at the dollar cost and the rate, the consumer might decide to use savings rather than to incur debt at all.

RATES

The rates in the Code are based on the underlying principle that legislation should *not* attempt to fix rates in the sense that public utility commissions fix rates for public utilities, but rather that the economic forces of free enterprise and supply and demand should set rates through improved competition within maximum ceilings prescribed in the consumer credit area. In consumer credit, ceilings are imposed in part because they have been imposed frequently in the past and in part because consumers are generally considered not to have equal bargaining power with creditors. On the other hand, with two narrow exceptions, no ceilings are imposed for business credit and any residual ceilings still applicable to business credit under general usury statutes are removed.

In deciding what the rate maximums should be, the Commissioners took into account that raising and lowering maximum rates have the inevitable effect of increasing or decreasing the size of the consumer credit market. High maximums permit more persons to obtain credit from legitimate sources; low maximums decrease the number of persons who may obtain credit. The maximum ceilings provided in the Code are designed to permit most credit-worthy consumers to have access to the consumer credit market.

The basic maximum rate in the Code is 18%. There are higher graduated rates where the amount of the credit is small. 36% per annum is permitted on the amount of the unpaid balance up to $300, 21% on the amount from $300 to $1,000 and 15% on the amount over $1,000, with the composite actual rate under these graduated rates levelling off at 18%. In order to charge rates in excess of 18%, a lender (but not a seller) must either be licensed or a supervised financial organization, e.g., a bank, credit union or the like.

On revolving charge accounts in sales credit, the maximum permitted rate is 2% per month (24% per year) on the amount outstanding up to $500 and 1½% per month (18% per year) on the amount in excess of $500.

LICENSING, FEES AND ADMINISTRATION

Each creditor who is regularly engaged in the business of granting consumer credit is required to notify the Administrator that he is so engaged. In addition, he is required to pay an annual fee based upon the amount of the consumer credit obligations owed to him. This fee is designed to defray all or part of the cost of administering the Act.

In order to make loans at rates in excess of 18%, a lender must first obtain a license from the Administrator. The Administrator is directed to investigate the applicant and grant the license only if he finds that the financial responsibility, character and fitness of the applicant are such as to warrant belief that the business will be conducted fairly.

Banks and other institutions which are supervised by other governmental agencies are not subject to the licensing requirement.

The Administrator has broad powers to investigate, issue orders and go to court to obtain compliance by creditors with the act. His actions, however, are subject to notice, fair hearing and other due process requirements.

Among his other powers, the Administrator is authorized to seek an injunction against unconscionable agreements or conduct.

EFFECT OF CODE ON POWERS OF ORGANIZATIONS

The Code prescribes maximum charges for all creditors extending consumer credit and displaces existing limitations on the powers of creditors based on maximum charges.

In the case of sellers of goods or services, small loan companies, licensed lenders, consumer and sales finance companies, industrial banks and loan companies, and commercial banks and trust companies, the Code displaces existing limitations on their powers based solely on amount or duration of credit.

Except as to maximum charges, the Code does not displace limitations on powers of credit unions, savings banks, savings and loan associations, or other thrift institutions.

Except as to maximum charges, the Code does not displace limitations on powers either of commercial banks or thrift institutions with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land or other similar restrictions designed to protect deposits.

THE FEDERAL CONSUMER CREDIT PROTECTION ACT (FCCPA)

The Federal Consumer Credit Protection Act [Public Law 90-321, 82 Stat. 146] does not purport to be a comprehensive consumer credit law. It requires disclosure of the terms of a credit transaction and regulates credit advertising (Title I), it makes extortionate extensions of credit illegal (Title II), it restricts the amount of a debtor's earnings subject to garnishment (Title III), and it sets up the National Commission on Consumer Finance which is directed to study the consumer credit industry (Title IV).

Title I of the FCCPA is officially named the "Truth-in-Lending Act". Section 123 of that law directs the Federal Reserve Board to exempt from the disclosure requirements of the Act any class of transactions if the Board determines that under the law of the state the class of transactions is subject to requirements "substantially similar" to those imposed by the "Truth-in-Lending Act" and that there is adequate provision for enforcement.

The Code is designed and intended to have disclosure requirements which meet the "substantially similar" test in order that any state enacting the Code will be exempt from the disclosure requirements of the Federal "Truth-in-Lending Act".

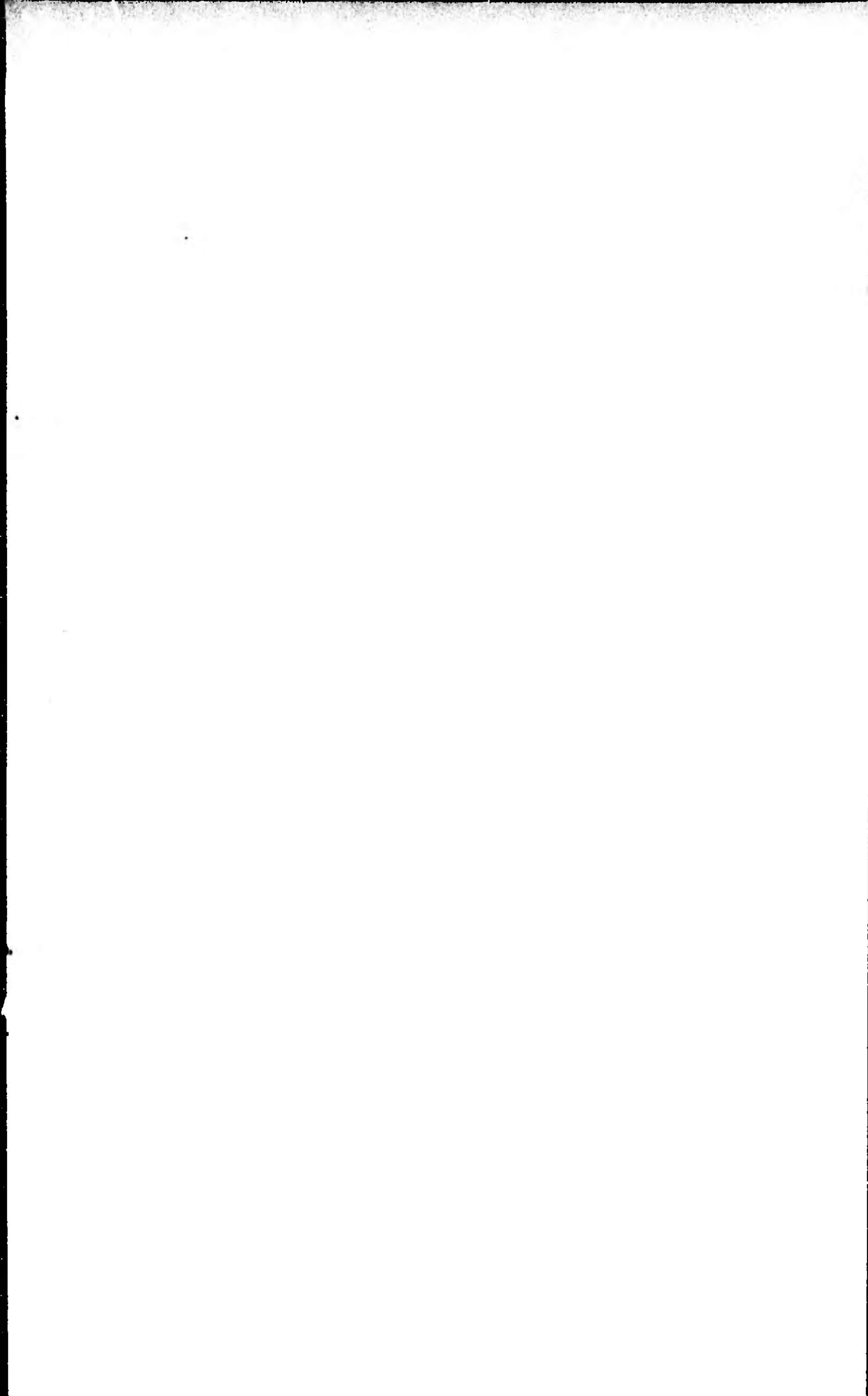
The Federal Reserve Board has not yet issued regulations under the FCCPA. A final ruling that the Code will exempt any state enacting it from the disclosure requirements of the "Truth-in-Lending Act" is being requested in August, 1968.

The Code's provisions on advertising are substantially the same as those in the FCCPA, and the Code's provision on garnishment is more restrictive than that in the FCCPA.

Assuming the Code meets the "substantially similar" and adequate enforcement tests of the FCCPA, the FCCPA would affect only credit advertising and extortionate extensions of credit in any state enacting the Code.

THE UNIFORM COMMERCIAL CODE'S APPLICATION

The Uniform Commercial Code provides that the rules it sets forth are subject to regulatory legislation particularly in consumer transactions. Thus the Consumer Credit Code will supplement the Commercial Code. The Commercial Code sets the background and its rules will continue to apply to consumer transactions except where the Consumer Credit Code provides different rules for consumer credit transactions.



Jackson work copy

Introduced: 1/20/70
Referred: Commerce and Judiciary

1 IN THE HOUSE BY BORER

2 HOUSE BILL NO. 497

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to revolving credit plans."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 06.05.208(c) is repealed and re-enacted to read:

9 (c) A seller of goods or services who sells instruments pro-

10 vided for in (a) of this section to ~~a~~ bank at a discount shall, upon

11 request of the buyer of the goods and services, sell them for cash

12 in an amount equal to the regular price less the discount.

13 * Sec. 2. AS 06.05.208 is amended by adding a new subsection to read:

14 (d) A buyer of goods or services whose request for a discount

15 is refused, and who then buys from the seller at the regular price,

16 may recover from the seller an amount equal to three times the regular

17 price.

18

19

20 Commerce recommended

21 strike

22 "to a bank"

23

24

25

26

27

28

29

TELEGRAM

1929 Communications Group (ACS) USAF
FEDERAL BLDG. ROOM 137 PHONE 6-7477
JUNEAU, ALASKA

V

1970 FEB 4 PM 1 44

File HB-497

CEA007 NL PDF

ANCHORAGE ALASKA 4

HON BARRY JACKSON ALASKA STATE HOUSE OF REPRES
POUCH V STATE CAPITOL BLDG JUN

WE WOULD APPRECIATE YOUR ENTERING THE FOLLOWING TESTIMONY REGARDING HOUSE BILL NUMBER 497 RELATING TO REVOLVING CREDIT PLANS INTO THE MINUTES OF YOUR COMMITTEE HEARING ON FEBRUARY 5, 1970. THIS REPRESENTS THE VIEWS OF THE ALASKA RETAIL ASSOCIATION ON THAT MEASURE.

HB 497 WOULD REQUIRE A SELLER OF GOODS AND SERVICES WHO SELLS INSTRUMENTS TO A BANK AT A DISCOUNT, TO, UPON REQUEST OF A BUYER OF GOODS AND SERVICES, SELL THEM FOR CASH EQUAL TO THE REGULAR PRICE, LESS THE DISCOUNT. FRANKLY, IT IS A LITTLE DIFFICULT TO DETERMINE THE EXACT PURPOSE OF THIS MEASURE. IT WOULD APPEAR THAT THIS BILL WOULD HAVE THE EFFECT OF ATTEMPTING TO CONTROL THE PRICES A SELLER CHARGES. IN ESSENCE, HB 497 IS SAYING TO RETAILERS: "YOU MUST SELL AT A DISCOUNT TO ANYONE REQUESTING IT." THIS COULD LEAD TO SOMEWHAT CHAOTIC MARKET CONDITIONS IF THIS PHILOSOPHY IS CARRIED FAR ENOUGH. ON THE SURFACE, THIS SEEMS TO BE A SOMEWHAT DANGEROUS PIECE OF LEGISLATION IF THIS IS INDEED THE INTENT.

HB 497 IS APPARENTLY AIMED DIRECTLY AT THE BANK CREDIT CARD CONCEPT, WHICH IS PRESENTLY BEING UTILIZED BY APPROXIMATELY 850 SMALL AND MODERATE SIZED RETAILERS THROUGHOUT ALASKA. THE RETAILER, IN CONTRACTING FOR THIS SERVICE, AGREES TO A FEE AMOUNTING TO A SPECIFIED PERCENTAGE OF GROSS SALES MADE UNDER A BANK REVOLVING CREDIT PLAN. THIS FEE IS A DIRECT COST TO THAT RETAILER AND IS REGARDED AS A PART OF HIS COST OF OPERATION. REQUIRING A RETAILER TO GIVE A DISCOUNT BECAUSE HE HAPPENS TO SELL CERTAIN INSTRUMENTS TO A BANK AT A DISCOUNT SEEMS UNUSUALLY

[illegible] COULD, PERHAPS, BE CONSIDERED A FORM OF PRICE CONTROL.

A RETAILER'S CASH PRICE IS GEARED TO TWO BASIC THINGS: COST OF OPERATION AND COMPETITION. INCREASES IN VOLUME THROUGH USE OF BANK CREDIT CARDS CAN OFF-SET AT LEAST A PORTION OF THE COST OF THE DISCOUNT PAID TO THE BANK. REQUIRING THAT RETAILER TO GIVE EVERYONE A DISCOUNT COULD SERVE TO DRIVE THAT CASH PRICE UP, WITH A CONSEQUENT LOSS TO ALL CONSUMERS--BOTH THOSE WHO BUY ON A STRICTLY CASH BASIS AND THE CREDIT CUSTOMER.

THE ADVANTAGES OF A BANK CREDIT CARD PLAN TO A RETAILER ARE

(1) QUICK TURN-OVER OF CASH AND

(2) INCREASED BUSINESS THROUGH BEING IN A POSITION TO OFFER HIS CUSTOMERS EXTENDED TERMS: SOMETHING THE AVERAGE SMALL RETAILER IS USUALLY UNABLE TO DO COMPETITIVELY.

THE QUESTION MIGHT ARISE: WHY SHOULD A BANK OBTAIN A PERCENTAGE FEE FROM THE RETAILER AND THEN, ADDITIONALLY, CHARGE THE CONSUMER A MONTHLY FINANCE CHARGE ON TOP OF THIS? THE ANSWER IS READILY APPARENT. EVEN THOUGH THE INSTRUMENTS SOLD TO A BANK ARE DISCOUNTED AND ARE ON A NON-RECOURSE BASIS, THERE ARE STILL HANDLING COSTS TO CONSIDER FROM THE POINT OF VIEW OF THE BANK. WHILE WE DON'T HAVE THE EXACT FIGURES, IT IS OBVIOUS THAT A FAIR PERCENTAGE OF THE DISCOUNT FEE IS USED UP IN THOSE HANDLING COSTS. FROM THE POINT OF VIEW OF THE RETAILER, HE IS ABLE TO FINANCE A PORTION OF HIS ACCOUNTS RECEIVABLE AT WHAT IS, IN THIS DAY AND AGE, A VERY SATISFACTORY RATE. BORROWING DIRECT TO FINANCE HIS OWN RECEIVABLES WOULD COST SUBSTANTIALLY MORE.

BECAUSE OF THESE COST FACTORS, WHICH LARGELY WIPE OUT THE FEE PAID TO THE BANK BY THE RETAILER, IT IS NECESSARY AND REASONABLE FOR THE BANK TO CHARGE A FINANCE FEE TO THE CONSUMER-USER OF THE CREDIT CARD PLAN. ADDITIONALLY, LIKE MOST RETAIL CREDIT PLANS, A CUSTOMER MAY PAY IN FULL WITHIN 25 TO 30 DAYS WITHOUT INCURRING ANY FINANCE CHARGE.

DEAN FURICH ALASKA RETAIL ASSOCIATION

BOX 1727 ANCHORAGE ALASKA

497 5 1970 497 497 497 850 (1) (2) 25 30.

HB
642

File [illegible]

RECEIVED

OCT 2 1968

SUPERIOR COURT FOR [illegible] OF ALASKA [illegible]

FIRST JUDICIAL DI[illegible], AT JUNEAU

[illegible], JERRY A. [illegible]
and [illegible] C. [illegible],

Plaintiffs,

v.

[illegible], SECRETARY
OF STATE, STATE OF ALASKA

[illegible] Civil Action No. [illegible]

[illegible]

This matter having come on before the court on August [illegible], 1968 on cross motions for summary judgment, plaintiffs being represented by [illegible] and defendant being represented by [illegible], the court [illegible] having [illegible] the [illegible], and having on August [illegible] the [illegible] in this matter, and [illegible],

[illegible]:

1. [illegible] to the [illegible] and the [illegible] provisions of [illegible] is ordered to place the names of George C. Wallace and Marvin Griffin on the general election [illegible] for the offices of President and Vice-President respectively, and to count all votes cast for such candidates as votes for plaintiffs as presidential electors. The designation of George C. Wallace for President and Marvin Griffin for Vice-President shall be followed by a designation of (Ind.) to signify the independent nature of their candidacy.

2. Plaintiffs are entitled to their costs herein including an attorney's fee of ____________.

DATED this 24th day of Sept, [illegible].

[illegible signature]

Judge

Approved as to form

[illegible signature]

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

TRANSCRIPT OF ORAL DECISION RENDERED IN THE

SUPERIOR COURT, FIRST JUDICIAL DISTRICT,

STATE OF ALASKA, AUGUST 28, 1968,

BY JUDGE THOMAS B. STEWART

This time has been fixed for the rendering of a decision in the case of McLin et al vs. Miller, No. 68-158. Before considering the merits of the case I wish to preface my remarks by noting that the opinion I am about to render is most informal rather than a more precise written opinion that I should have preferred to prepare in this case, but as counsel, who have prepared excellent briefs, well know, the problem of writing a precise statement is one that consumes a great deal of time and in view of the public significance of this case and the desirability of there being a decision at the trial level, without any further delay I have determined that this course is preferable and the purpose of my remarks is mainly to inform both the interested public and the reviewing court, if there should be a review or appeal, of the reasons why I have reached the conclusion that I have.

Upon close examination of all the briefs and in view of the cases cited in the briefs I do not believe there is any significant case authority outside of that that has been provided to me and I, therefore, am going to avoid the citation of cases and the statement of my reasons can be related to the citations that are in the briefs upon anyone wishing to review what I have to say.

The facts of the case I think are set out perhaps most completely in the memorandum submitted on behalf of the plaintiffs. These plaintiffs submitted petitions to the Secretary of State, the defendant Miller that is, requesting that the names of George C. Wallace and Samuel M. Griffin be

placed on the November general election ballot, that is November 5, 1968, and that votes for those candidates be counted as votes for the petitioners who seek to be shown as presidential electors in the case. Petitions were signed by over 1700 persons and were in the form prescribed by law for all nominations by petitions, that is no party nominations as titled in the statute. The Secretary accepted the petitions but informed the plaintiffs that he refused to recognize them as legally valid to accomplish their nomination to the office of presidential elector. Upon being advised of the Secretary's action the plaintiffs commenced this litigation in which they request the court to direct the Secretary to do what he has refused to do, that is to recognize their petitions as valid and place the names of the candidates for the national offices whom they support on the general election ballot, or in the alternative, that if the nomination is not permitted by petition, then the law which would be found to be restricted to nominations through political parties receiving 10% of the vote at the last gubernatorial election be found unconstitutional. So the issues of law involved are first, whether the applicable statutes may be reasonably interpreted to permit the selection, the appointment, of these plaintiffs as presidential electors, or if not, whether the applicable statutes are constitutional, specifically under the due process and equal protection provisions of the Alaska Constitution, Sections 1 and 7, Article 1, or the United States Constitution, the Fourteenth Amendment. In procedure in the case before the court on cross motions for summary judgment, both parties have agreed that there are no genuine issues of material fact and the facts are taken as shown by the pleadings on file and by the affidavits submitted in support of them. In my view, the central concern is that there is indeed a serious constitutional problem if the statutory

plan can not be held to permit nominations of presidential electors by petition. Without an alternate means of nomination there is no practical way for any new party or group of voters, no matter how substantial, to gain a place on the ballot. I think the seriousness of the constitutional challenge is shown by the Idaho case which is specifically cited in plaintiffs reply memorandum and which was discussed in the oral argument before this court. Even though in this case a different constitutional provision was involved, the challenge to the constitutionality of the statute was to a provision of the Idaho Constitution directly relating to suffrage, and the courts, neither the trial court nor the Supreme Court of Idaho, considered specifically the application of the equal protection clauses of their state Constitution or the federal Constitution. But it seems to me that equal protection would be denied these plaintiffs and the substantial group of voters they represent where the Legislature has fixed a plan for the appointment of presidential electors that provides for all qualified voters of the state to vote on their appointment, which is the plan in effect in Alaska, yet a substantial group cannot vote for candidates of their choice in that system because of the restrictive plan that exists that there is no alternate route for substantial groups to get the names of their preferred national candidates other than that of the two major parties on the general election ballot. So initially, in this case, I take the course of avoiding decision on the constitutional issue which is indeed a serious one, if by any reasonable construction the statutes can be found to permit these names to be shown on the ballot as sought by plaintiffs under the petition provisions. In this I follow the principal of the [illegible] case cited in the briefs and it is reiterated, that is the principal, reiteration of the principal in other

cases cited by the plaintiffs. Then I turn to the statutes to examine whether by their construction the constitutional question can be avoided. There are in fact two alternatives exposed, one is nomination by petition and the other would be selection of the presidential electors at the general election through a write in process. In examining first the write in process I would recommend a reading of the analysis given by the trial court in the Idaho case in which it is clearly set out that this is not a practical and reasonable means to accomplish the end. Not only would these voters have to select, have to write in the names of three electors which are uncommon, that is publicly unknown names, but the very process would deny what is available to other voters, that is to cast their vote having confronted before them the names of the candidates for president and vice president. It seems to me that the interpretation problem is at least as complicated if not more so by the use of the write in provisions of our statutes than by use of the petition provisions, and the procedure is, might become, equally outside, or more outside the intent of the legislature to use the write in provisions for this purpose than to use the petition provisions as an alternate route to nominate these presidential electors.

The defendants have set out several bases on which the court should find that petition provisions, which are in Chapter 25 of Title 15, should not be interpreted to allow the nomination of these plaintiffs as presidential electors. They [illegible] first the suggestion that they do not hold an office as the term is used in the statute. Well, as plaintiffs indicate, the right of nomination by that process refers to candidates, it doesn't refer to public offices or officers, but the right is couched in language which refers to candidates, and I believe certainly that these plaintiffs are candidates, not only

that, but candidates for office and I see no reason to reach the--to consider the phrase public office. The statute is not cast in those terms. The defendants make substantial argument as to the inconsistency of other provisions of Chapter 25 with the proposition that these plaintiffs can be nominated by (indistinguishable) / as well as by petition. It may very well be that there are inconsistencies but I think a reasonable interpretation of the whole picture is that the Legislature by some oversight or omission would not apply the procedural provisions with the relation to other offices to the office of presidential elector, and the reasonable interpretation of the statute in the circumstance, in the face of the constitutional question, is that the procedural provisions of Chapter 30 which specifically dwells with presidential electors ought to be used, reasonably as they are available, for the procedural problems in relation to the placing of names on the ballot, including the use of the candidates for national office, Mr. Wallace and Mr. Griffin, to be reproduced on the ballot, and that votes for them be counted for these petitioners as the electors pledged to support them. I think this answers some of the suggestion of inconsistencies which are to be found only if you rather narrowly confine your view of the statute to Chapter 25, and I think that it is not at all unreasonable or an unfair reading of the statute to relate Chapter 30 to Chapter 25 when you are considering the office of presidential elector, which removes some of the problems of inconsistency. It seems to me further that the inconsistencies are greater with respect to the use of the write in provision which defendant suggests might be an alternative than by using the petition provisions as an alternative to the one that is expressly set out relating to nomination by political parties. The defendants make an argument that there should be applied here the legal doctrine

emphasis which the defendant attaches, that is since the statute dwells expressly on nomination by political party, that any other route must be found beyond legislative intent. As indicated, I think the reasonable interpretation is to read Chapters 25 and 30 together, in which case I think it is not so clear that there is a legislative expression intending to exclude nomination of electors by petition. I find nothing unreasonable in the use of the figure 1000 voters as being the minimum to assure that this group is a significant one, not one that is so insignificant that it would be more expensive, more trouble, more difficult, more awkward that it would be justified to burden the ballot with their names. The defendant argues that 10% of the vote in the preceding general election ought to be used, but interpreting, as I say, Chapters 25 and 30 together, peremptory, as it were, I see no reason why the Legislature would have sought any more signatures for the office of president or vice president than they would have the office of United States senator or United State congressman or for governor as a basis to indicate that there is indeed a substantial group standing for the candidacy of these national officers. Defendant argues that plaintiffs suggest the principal of the case of Wade, [illegible] vs. [illegible], the Alaska case in which an interpretation of the construction, liberal interpretation of the construction became the purpose as made by the Supreme Court of Alaska even though that case did involve the interpretation of the Constitution and not of a statute, I think the analogy is not an unreasonable one for me to consider in determining whether a reasonable interpretation of this statute permits nomination of presidential electors by petition. In substance, then, I hold that the relief sought by the plaintiffs should be granted. That relief should include the placing of the names of the national candidates whom these

plaintiffs support on the election ballot and that votes for those candidates be counted for these petitioners as presidential electors pledged to support those national candidates. Plaintiffs may submit a form of judgment in accordance therewith.

THE PRECEDING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

ORIDA.

RT OF FLORIDA.

4, 1968.

t of a substantial

S DIRECTOR.

APPEALS OF TEXAS.

14, 1968.

eral of Texas, *Nola*
eneral, *A. J. Ca-*
ney General, *Rob-*
ssistant Attorneys
ppellee.

and the appeal is
reating the papers
petition for a writ

WILLIAMS ET AL. *v.* RHODES, GOVERNOR OF OHIO, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO.

No. 543. Argued October 7, 1968.—Decided October 15, 1968.*

Under the Ohio election laws a new political party seeking ballot position in presidential elections must obtain petitions signed by qualified electors totaling 15% of the number of ballots cast in the last gubernatorial election and must file these petitions early in February of the election year. These requirements and other restrictive statutory provisions virtually preclude a new party's qualifying for ballot position and no provision exists for independent candidates doing so. The Republican and Democratic Parties may retain their ballot positions by polling 10% of the votes in the last gubernatorial election and need not obtain signature petitions. The Ohio American Independent Party (an appellant in No. 543), was formed in January 1968, and during the next six months by securing over 450,000 signatures exceeded the 15% requirement but was denied ballot position because the February deadline had expired. The Socialist Labor Party (an appellant in No. 544), an old party with a small membership, could not meet the 15% requirement. Both Parties brought actions challenging the Ohio election laws as violating the Equal Protection Clause of the Fourteenth Amendment. A three-judge District Court held those laws unconstitutional and ruled that the Parties were entitled to write-in space but not ballot position. The Parties appealed to this Court. The Independent Party immediately sought interlocutory relief from MR. JUSTICE STEWART, which he granted by order after a hearing at which Ohio represented that it could place the Party's name on the ballot without disrupting the election if there was not a long delay. Several days after that order the Socialist Labor Party sought a stay which he denied because of that Party's failure to move quickly for relief, the State having represented that at that time the granting of relief would disrupt the election. *Held:*

1. The controversy in these cases is justiciable. P. 28.

*Together with No. 544, *Socialist Labor Party et al.* v. *Rhodes, Governor of Ohio, et al.*, also on appeal from the same court.

THIS OPINION MAY BE READ IN FULL IN VOLUME 393 AT PAGE 23 OF THE U.S. REPORTS AT LAW LIBRARY.

HB
782

ROBERTSON, MONAGLE, EASTAUGH, ANNIS & BRADLEY

ATTORNEYS AT LAW
P. O. BOX 1211
JUNEAU, ALASKA 99801

R. E. ROBERTSON (1885-1961)
M. E. MONAGLE
F. O. EASTAUGH
R. J. ANNIS
J. B. BRADLEY
W. G. RUDDY
T. P. BLANTON
L. B. JACOBSON

200 NATIONAL BANK OF ALASKA BLDG.
PHONE 586-3340
CABLE ADDRESS: ROMEA

April 6, 1970

The Honorable Tom A. Fink, Vice Chairman
House Judiciary Committee
Alaska State Legislature
Juneau

Re: House Bill No. 782

Dear Tom:

Pursuant to my telephone call to you this past Friday, I wish to confirm that I did get the expected materials and have had them duplicated and accordingly enclose one copy each of the following:

1. Confidential Committee Print No. 1 of Senator Magnuson's bill S. 2236 creating a Federal Insurance Guaranty Corporation. This represents the most recent printer version of the bill. However, there was a meeting last week in Washington, D. C., to consider still further amendments, but we do not have any copies. The indication is that the amendments will further reduce the Federal bureaucracy required and further strengthen state regulation.

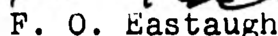
2. The Nixon Administration's bill S. 3542 establishing a Federal insurance guaranty program under the Federal Insurance Administrator in the Department of Housing and Urban Development.

3. A statement by Senator Norris Cotton, Republican of New Hampshire, when he introduced S. 3542 at the request of the Department of Housing and Urban Development.

4. A Committee statement comparing the Committee redraft of S. 2236 (Confidential Committee Print No. 1) with the Administration bill S. 3542.

I realize the Committee is probably inclined to go along with Director Fritz's recommendation, but I am equally sure that the NAIC policy is based on Senator Magnuson's bill and not on S. 3542.

Sincerely yours,



F. O. Eastaugh

FOE:bh
Encs.
cc: Hon. Barry W. Jackson

FEDERAL INSURANCE GUARANTY: A Comparison Between the Magnuson Proposal (S. 2236 revised) and the Administration Proposal (S. 3542)

Form

The Magnuson proposal establishes a Federal Insurance Guaranty Corporation that is independent of existing governmental machinery.

The Administration bill creates a Federal Insurance Guaranty Program under the Federal Insurance Administrator in the Department of Housing and Urban Development.

Management

The Magnuson proposal vests the management of the Corporation in an Administrator appointed by the President with the advice and consent of the Senate for a term of six years. The Administrator is assisted by an Advisory Committee consisting of consumer representatives, insurance industry spokesmen, and state insurance commissioners. In addition to advising the Administrator, the Committee is given actual power to approve or reject proposed national standards for insurance regulation and liquidation. The Committee must also concur in any decision by the Administrator to revoke guaranty status.

The management of the Program is vested in the Secretary of HUD and the Federal Insurance Administrator who is appointed by the Secretary. An Advisory Committee chaired by the President's Adviser on Consumer Interests is created and given only advisory power.

Financing

The Magnuson proposal provides for the independent financing of the Corporation through the issuance of capital stock and yearly national assessment on companies whose policies are guaranteed under the Act. The Corporation is also authorized to borrow from the Treasury to cover any immediate obligations. Funds generated through national assessments or special state post-insolvency assessments are used

to repay the loans and interest. There are certain important ceilings imposed by the Magnuson proposal:

1. Yearly national assessments are limited to one twenty-fifth of 1 per centum of the net direct premiums written. (Currently about $10 million per year or 4 cents per $100 of premium.)

2. The Corporation can spend no more than $7.5 million per year for administrative expenses.

3. National assessments cease when the guaranty fund exceeds one-eighth of 1 per centum of the net direct premiums written (currently about $30 million.)

4. State assessments cannot exceed 1 per centum of the net direct premiums written in any one year.

5. There is an outstanding treasury loan ceiling of $100 million.

The Administration's Federal Insurance Guaranty Program is financed through appropriations that are maintained in a separate fund and through monies received from post-insolvency state assessments and treasury loans. The only ceiling imposed is the 5% ceiling on administrative expense add-on to any post-insolvency assessment Because interest on treasury loans is designated as an administrative expense, the ability to borrow from the treasury could be hampered by the unavailability of appropriations to cover all administrative expenses including interest on loans. In other words, the 5% ceiling, as a practical matter, may prevent the Program director from actually borrowing money to meet the guaranty obligations of the Corporation.

PROTECTION OF CONSUMERS

Prevention of Insolvencies

(1) Improvement of State regulation:

The Magnuson proposal attempts to improve state regulation by providing for the

setting of voluntary national standards for regulation, rehabilitation, and liquidation. In so doing, the Corporation is required to pay attention to the Wisconsin Liquidation and Rehabilitation Act which the National Association of Insurance Commissioners has adopted as a model state act. No standards become effective until the Advisory Committee, by majority vote, approves them.

By creating two guaranty statuses, the Magnuson proposal attempts to create incentives for the states to meet the national voluntary standards. A state living up to the national standards is insulated from any and all unwanted Federal intervention. The Corporation performs the guaranty function only upon presentation by the State of the unadjudicated claims. Because insurance companies domiciled in States meeting the national standards are not subject to Federal examination and are granted permanent guaranty status, the Magnuson proposal provides incentives for the domiciliary insurance companies to work with the State supervisory authority and the State legislature in order to meet national standards. An ostensible incentive for improving State insurance regulation is also provided by the possible post-insolvency assessment liability of companies (and therefore their policyholders) doing business in a State where an insolvency occurs.

The Administration relies upon the post-insolvency assessment approach as its only vehicle for improving state regulation. The efficacy of this approach was questioned in hearings on S. 2236 (pages 287 and 298). Would the threat of assessment cause the insurance industry of the State to bring pressure upon the State supervisory authority to do a better job of regulating? Does the ability of the insurance industry to pass most of the assessment cost on to the public reduce the likelihood of strong industry pressure for improved regulation? Would the ten or fifteen cent price increase per policy so incense the public that they would insist on that the State supervisory authority do a better job of preventing insolvencies?

If the State post-insolvency assessment approach does provide incentive for improved State regulation, does it provide such strong incentives that no other incentives need be provided?

(2) Monitoring of interstate activities, providing of useful information, and availability of a body of experts --

The Magnuson proposal, by providing for an independent Corporation which is independently financed, insures that the Federal Corporation will assist the State commissioners by providing them with information related to the interstate operations of insurers. It could also provide accurate information about security values and generally serve as an information gathering agency for State regulatory authorities.

The Magnuson proposal would certainly provide State commissioners a much needed expertise.

The National Association of Insurance Commissioners has recognized the need for such services in their Report of the Special Committee on Automobile Insurance Problems at pages 196 and 197:

> (3) Technical Staff Assistance to the States. A third function of the Corporation would be to provide State insurance departments with professional expertise and assistance both before and during an insolvency proceeding. The Corporation would possess knowledgeable consultants from which the individual commissioner could solicit aid if and when desired.
>
> The State insurance departments would retain their jurisdiction; insolvency proceedings would be handled in the usual way.. However, an insurance company insolvency can be a complicated transaction. It is frequently difficult to find, on a local basis, accountants or lawyers with special expertise in this area. Insolvencies create extra work demands on State insurance departments which they are not always equipped to meet, and liquidation costs are sometimes higher because those handling them are dealing with them for the first time. This also applies to ancillary proceedings. But, with the Corporation available to pull the interstate pieces together for the local insolvency proceedings, greater efficiency and lower costs could result.

> . . . The existence of a competent, well staffed and well financed group of experts in the Corporation, to supplement the insurance department staffs, could be most helpful in efforts to speedily administer criminal and civil justice." (emphasis added.)

The Administration's Program depends upon appropriations for staffing and other administrative activities. The imposition of a 5% add-on to any post insolvency assessment to cover administrative costs (including interest on treasury loans) suggests that the Administration contemplates a rather limited role for the Program staff.

(3) Loans to participating insurers --

Section 8(c) of the Magnuson proposal authorizes the Corporation to advance loans to participating insurers in order to get them back on their feet and prevent their liquidation. This loan authority has enabled the FDIC and FSLIC to keep many banks from becoming insolvent.

The Administration's bill has no comparable provision.

(4) Federal examination of companies domiciled in states not meeting federal standards --

To further aid in the prevention of insolvencies, the Magnuson proposal authorizes the Corporation to examine, when necessary, companies domiciled in states not meeting the voluntary national standards. Such examinations are to be conducted by Federal examiners in cooperation with the State supervisory authority. No federal examination is authorized in those states meeting the national standards.

The Administration proposal has no such provision.

(5) Revocation of guaranty status --

The Magnuson proposal allows the Corporation to revoke the guaranty status of participating insurers in order to put them out of business. The revocation of any insurer domiciled in a State meeting the voluntary national standards can only take

place if the State supervisory authority asks the Corporation to revoke an insurer's guaranty status or concurs in such a motion made by the Corporation. The Corporation may revoke the guaranty status of an insurer domiciled in a State not meeting the national standards, but such revocation cannot take place without the concurrence of a majority of the Advisory Committee. A company who continues to do business without guaranty status when it is required to have guaranty status is subject to a fine of not more than $1,000 per day.

The Administration bill has no comparable provision.

Payment of Guaranty

(1) Scope of protection --

The Magnuson proposal requires the Corporation to assume all the insurance company's guaranteed policy obligations, including the obligation to provide legal defense. The Corporation steps into the shoes of the insurer without interferring with the State and performs as if it were the company pursuant to the suggestion of the NAIC Report, *supra*. The only limitations on the scope of the protection are those imposed by the policy contract provisions themselves.

The Administration's proposal protects the consumer to the extent the State liquidator determines he should be protected. The Program pays the adjudicated claims that the State liquidator files with the Secretary of HUD. In those states having post-insolvency assessment plans, the Secretary will not pay the first $100 of any valid claim. In other words, citizens of states having post-insolvency assessment plans are afforded less protection than those in states without such plans.

(2) When is the consumer protected?

Under the Magnuson proposal the consumer is protected as soon as the insurance company is placed in liquidation (for whatever reason) and ceases to meet its policy

obligations. Claimants against companies who are domiciled in States meeting national standards file their claims with the State liquidator who immediately turns them over to the corporation which is required to investigate, examine, adjust, compromise, or settle them as quickly as possible. The Corporation becomes the receiver of companies domiciled in States not meeting the national standards when they are placed in liquidation and cease to meet their policy obligations. It pays valid claims against the company as soon as possible. Under the Magnuson proposal no consumer should go without payment of valid claims for any significant length of time -- certainly no longer than several months from the time the Corporation receives the claim and much less time if the claim is for return of unearned premium.

Under the Administration's proposal the time of payment is very uncertain. If a State had the Wisconsin Rehabilitation and Liquidation Act and an experienced liquidator, the Administration approach might work as speedily as the Magnuson approach if the borrowing authority under the Administration bill were workable. But only Wisconsin has such a law, even though the National Association of Insurance Commissioners adopted the Wisconsin law as the model rehaibilitation and liquidation law in 1968. The previous model legislation was the New York Uniform Liquidation Act adopted in 1939. To date only twenty-eight states have adopted the 1939 model act.

Under the Administration bill the following must occur before any claimant is paid:

(1) Insurer placed in liquidation.

(2) Insurer adjudicated insolvent.

(3) Private contractual remedies of claimant pursued.

(4) Claim submitted to State liquidator.

(5) Claim investigated, adjusted, compromised or settled by State liquidator with court approval where necessary, or by the insurance industry in the State if the State has a post-insolvency assessment plan.

(6) Claim submitted to the Secretary for payment.

(7) Payment, either before or after periodic assessment, to the State liquidator.

(8) State liquidator pays the claimant.

An adjudication for insolvency alone can take as much as five years.

Of course time factors vary from State to State. But as the NAIC has stated: "It is frequently difficult to find, on a local basis, accountants or lawyers with special expertise in this area." (see *supra.*) The Administration's proposal does not seem to guarantee "the expeditious compensation of consumers for insured losses arising under policies of property, liability, or surety policies issued in interstate commerce by insurers which become insolvent," even though "expeditious compensation" is a stated purpose of the Administration's bill.

Agreement on principles reflected in the two proposals

1. Federal legislation is needed to guarantee that every citizen, every policyholder, and every claimant is *properly* and *fully* compensated for his insured losses. (*Hearings* at 274)
2. The Federal legislation should provide incentives for improving State regulation. (*Hearings* at 287)
3. The Federal legislation should not disturb the basic framework of State regulation. (Hearings at 276; see also *id.* at 190, 200, and 201.)
4. If a State has acted already or decides to act in the future the Federal

legislation should not conflict with it but only reinforce and bolster it up. (Hearings at 280)

Possible Disagreement

1. Magnuson's proposal: Voluntary national standards for regulation, rehabilitation, and liquidation do not disturb the basic framework of State regulation. (Hearings at 200-01.)

Administration's view:

2. Federal standards might very well constitute Federal regulation. (Hearings at 276)

S. 3542--INTRODUCTION OF THE FEDERAL INSURANCE GUARANTY ACT

Mr. COTTON. Mr. President, at the request of the department involved, I now introduce the administration's proposed Federal Insurance Guaranty Act and ask unanimous consent that it be referred to our Committee on Commerce.

I make this request in view of the fact that on May 23, 1969, a similar measure, S. 2236, was introduced by the distinguished Senator from Washington (Senator Magnuson) for himself and others, which was referred to our Committee on Banking and Currency which subsequently discharged the bill for referral to our Committee on Commerce.

Since that time our Committee on Commerce has held several days of hearings on the bill S. 2236, the last being on February 10 of this year at which time administration witnesses testified in response to the committee's request indicating that it, the administration, would submit its own legislative proposal as an alternative to the bill S. 2236.

Mr. President, this alternative legislative proposal is the one which I now introduce and, as previously noted, request unanimous consent for its referral to our Committee on Commerce.

In making this introduction, I am mindful of the fact that there is considerable concern both within and without Congress with respect to such legislative proposals and the probable impact of such upon the McCarran-Ferguson Insurance Regulation Act which provides in part a congressional declaration that "the continued regulation and taxation by the several States of the business of insurance is in the public interest."

It is my understanding, Mr. President, that the bill which I now introduced is in consonance with this congressional declaration of policy and will do minimum violence to it. Quite frankly, if it were to do otherwise and upset this long-standing Federal/State relationship, then I would be constrained to oppose its enactment. I have been advised, however, that this alternative legislative proposal will serve to meet the particular problem at hand without any such adverse impact, and I would hope that subject to the granting of my unanimous-consent referral to our Committee on Commerce, such legislative proposal will be accorded every consideration along with the bill S. 2236 now pending before that committee.

91st CONGRESS
2d Session

S. 3542

IN THE SENATE OF THE UNITED STATES

March 4, 1970

Mr. Cotton introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To authorize the Secretary of Housing and Urban Development to establish a Federal insurance guaranty program under the Federal Insurance Administrator to protect the American public against losses resulting from the insolvency of insurers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Insurance Guar-
4 anty Act".

5 PURPOSE

6 Sec. 2. The purpose of this Act is to provide a national
7 program within the framework of State regulation of the in-
8 surance industry, for the expeditious compensation of con-

II

1 sumers for insured losses arising under policies of property,
2 liability, or surety insurance issued in interstate commerce
3 by insurers which became insolvent, where the funds readily
4 available from all other sources are insufficient to satisfy the
5 insurer's valid outstanding claims in full.

6 DEFINITIONS

7 SEC. 3. (a) When used in this Act, unless the context
8 otherwise requires, the term—
9 (1) "approval of a claim" or "approved claim"
10 means any unpaid claim—
11 (i) including claims for refunds of unearned
12 premiums, but excluding amounts due any reinsurer,
13 insurer, insurance pool, or underwriting association,
14 as subrogation recoveries or otherwise,
15 (ii) arising under and within the coverage and
16 limits of insurance policies issued by any insurer
17 adjudged, subsequent to the effective date of this
18 Act, to be insolvent under the laws of its domiciliary
19 State, and
20 (iii) which has been finally determined ad-
21 ministratively or judicially under applicable State
22 law to be valid in a fixed amount;
23 (2) "certification of an approved claim" or "certi-
24 fied approved claim" means an approved claim (in
25 whole or in part) which the State insurance authority

1 of the domiciliary State of an insolvent insurer certifies
2 to the Secretary (i) is unpaid, and (ii) is not payable
3 under any other policy or contract of insurance or re-
4 insurance, or under any State insolvency or guaranty
5 fund, pool, association, or assessment;
6 (3) "domiciliary State" means:
7 (i) the State of incorporation or organization
8 of an insurer organized or incorporated in the
9 United States, or
10 (ii) the State of entry of an alien insurer;
11 (4) "Federal Insurance Administrator" means the
12 Federal Insurance Administrator within the Department
13 of Housing and Urban Development, authorized by sec-
14 tion 1105 of the Housing and Urban Development Act
15 of 1968 (42 U.S.C. 3533a);
16 (5) "insolvency" or "insolvent," as applied to an
17 insurer, shall be construed in accordance with the ap-
18 plicable laws of its domiciliary State;
19 (6) "insurance" means all kinds of direct insurance
20 except life, title, disability, and mortgage guaranty in-
21 surance;
22 (7) "insurance policy" or "policy" means any con-
23 tract or policy of insurance, including any valid endorse-
24 ment thereto, delivered or issued for delivery in any
25 State;

1 (8) "insurer" means any person licensed to engage
2 in the business of insurance under the laws of any State,
3 which issues policies of insurance in interstate com-
4 merce or reinsures its policies (in whole or in part) in
5 interstate commerce;
6 (9) "interstate commerce" means trade or com-
7 merce between or among several States or within the
8 District of Columbia;
9 (10) "net direct premiums written" means gross
10 direct premiums written on insurance policies, less return
11 premiums thereon and dividends paid or credited to
12 policyholders on such direct business, and excluding pre-
13 minums on contracts between insurers or reinsurers;
14 (11) "person" means any individual or group of
15 individuals, corporation, partnership, association, or any
16 other organized group of any of the foregoing, and
17 includes State and local governments and agencies
18 thereof;
19 (12) "Secretary" means the Secretary of Housing
20 and Urban Development;
21 (13) "State" or "United States" means the sev-
22 eral States, the District of Columbia, the territories and
23 possessions, the Commonwealth of Puerto Rico, and
24 the Trust Territories of the Pacific Islands; and
25 (14) "State insurance authority" means the per-

1 son having legal responsibility for regulating the busi-
2 ness of insurance within a State.
3 (b) The Secretary is authority to define, by rules and
4 regulations, any technical or trade term, insofar as such
5 definition is not inconsistent with the provisions of this Act.

6 GENERAL AUTHORITY

7 SEC. 4. The Secretary is authorized to establish under the
8 Federal Insurance Administrator, and to carry out under his
9 direct supervision, a national insurance guaranty program in
10 accordance with the provisions of this Act to protect the
11 consumer public from uncompensated losses arising under
12 insurance policies issued by insurers subsequently adjudged
13 to be insolvent under the laws of their domiciliary State.

14 LISTS OF INSURERS

15 SEC. 5. Each State insurance authority shall file with the
16 Secretary within sixty days after the effective date of this
17 Act, and on or before August 31 of each calendar year there-
18 after, a list of all insurers licensed to do business in the State,
19 showing the amounts of net direct premiums written by lines
20 of insurance to which this Act applies in the State by each
21 insurer during the preceding calendar year.

22 INFORMATION ON INSOLVENCY PROCEEDINGS

23 SEC. 6. (a) Within ten days after finding any domestic,
24 foreign, or alien insurer insolvent, the State insurance author-
25 ity making such finding shall so notify the Secretary.

1 (b) Within ten days after the institution of any pro-
2 ceeding to rehabilitate or liquidate an insurer or which might
3 result in the rehabilitation or liquidation of an insurer, the
4 State insurance authority of the State where such proceeding
5 is instituted shall so notify the Secretary, and shall keep the
6 Secretary currently and fully informed of the progress and
7 outcome of each such proceeding.

8 NOTIFICATION OF POSSIBLE CLAIMS

9 SEC. 7. (a) Whenever an insurer is adjudged insolvent
10 and placed in receivership or liquidation by a court of com-
11 petent jurisdiction, the State insurance authority in its domi-
12 ciliary State shall promptly determine and notify the Sec-
13 retary if it appears that all the valid outstanding claims
14 against such insurer cannot be fully and expeditiously paid
15 from its assets and such funds as may be available from other
16 insurers or reinsurers and from insolvency or guaranty funds
17 or associations established under State laws. For the pur-
18 poses of this Act, it shall be presumed that such claims, aris-
19 ing in any State in which an applicable insolvency or guar-
20 anty fund or association established under State law does not
21 exist, cannot be fully and expeditiously paid, but such pre-
22 sumption shall be subject to an explicit contrary determina-
23 tion and certification by the domiciliary State insurance au-
24 thority.

25 (b) Whenever the Secretary receives the foregoing no-

1 tice from the domiciliary State insurance authority that an
2 insurer has been adjudged insolvent and that any outstanding
3 claim may not be fully and expeditiously paid, the Secretary
4 shall promptly notify all other insurers licensed within the
5 domiciliary State of the insolvent insurer of the possibility
6 that he may be required to make guaranty payments under
7 the authority of this Act shall that the insurers so notified
8 may be required to pay assessments to provide the necessary
9 funds.

10 CERTIFICATION AND PAYMENTS OF CLAIMS

11 SEC. 8. (a) As soon as he has determined that any
12 approved claims cannot be fully and expeditiously satisfied
13 without recourse to the Secretary, the domiciliary State in-
14 surance authority shall certify to the Secretary, in accordance
15 with such regulations as the Secretary may prescribe, such
16 approved claims for payment by the Secretary.

17 (b) Upon receipt from the domiciliary State insurance
18 authority of a list, or of periodic lists, of certified approved
19 claims, the Secretary shall, as promptly as practicable, pay
20 to the appropriate receiver or liquidator in such State suffi-
21 cient moneys to satisfy in full such certified approved claims:
22 *Provided*, That with respect to any State where an insol-
23 vency or guaranty fund or association has been established
24 pursuant to State law, only that portion of each approved
25 claim shall be paid by the Secretary which is in excess of

1 $100 and is less than $300,000, and is not payable under
2 such State law.

3 INSURER ASSESSMENTS

4 SEC. 9. (a) Whenever he is required to make guaranty
5 payments under the authority of this Act to satisfy the certi-
6 fied approved claims of an insolvent insurer, the Secretary
7 shall obtain funds for or reimbursement of such payments
8 by periodically (but not more often than monthly) assessing
9 each other insurer licensed to do business in the domiciliary
10 State of the insolvent insurer for a proportionate share of
11 (1) the total amount of the guaranty payments required,
12 plus (2) up to an additional 5 per centum of such amount to
13 defray his estimated administrative and operating expenses.
14 Such proportionate share for each insurer shall be based
15 upon its relative share of the total net direct premiums writ-
16 ten within that State by all insurers in the calendar year prior
17 to the year in which the insolvent insurer was determined to
18 be insolvent: *Provided*, That in the event the total assess-
19 ments under any applicable State law and by the Secretary
20 upon any insurer in any State in any calendar year (includ-
21 ing any assessment balance from a prior year) exceed 2 per
22 centum of its net direct premiums written in such State in the
23 applicable prior year, the excess over 2 per centum, plus
24 interest as provided herein, may be paid to the Secretary
25 in the immediately succeeding year or years thereafter.

1 (b) Payments by insurers of such assessments shall be
2 due and payable within thirty days of receipt of notice from
3 the Secretary of the amounts owed. After such thirty-day
4 period, interest shall begin to accrue on any unpaid amounts
5 at a rate determined by the Secretary: *Provided,* That such
6 rate shall not be less than the sum of (1) a rate determined
7 annually by the Secretary of the Treasury taking into consid-
8 eration the current average market yield on outstanding mar-
9 ketable obligations of the United States with remaining
10 periods to maturity of less than one year, and (2) a fee of 1
11 per centum per annum.
12 (c) Within forty-five days after date of notice of assess-
13 ment, but only after making such payment or the portion
14 thereof due in the current year, any insurer may file a writ-
15 ten notice of objection to the Secretary's determination and
16 shall be entitled to a hearing in accordance with the provi-
17 sions of this Act to determine whether all or a portion of such
18 assessment should be refunded.
19 SUBROGATION
20 SEC. 10. (a) The Secretary shall be subrogated to any
21 approved claim which any claimant has against the estate
22 of the insolvent insurer in the amount paid by the Secre-
23 tary to satisfy such approved claim.
24 (b) The Secretary shall credit equitably to the assessed
25 insurers of the domiciliary State of an insolvent insurer,

1 and periodically repay to such insurers, subject to appro-
2 priate offsets and less any additional expenses incurred in
3 connection with such collections, any amounts which he may
4 recover through his subrogation to claims against the estate
5 of such insolvent insurer.

6 PENALTIES

7 SEC. 11. Section 709 of title 18, United States Code, is
8 amended by inserting after the eighth paragraph thereof the
9 following new paragraph:
10 "Whoever, except with the specific written authoriza-
11 tion of the Secretary of Housing and Urban Development or
12 of the Federal Insurance Administrator, uses the words 'Fed-
13 eral Insurance Guaranty', 'Federal Insurance Administra-
14 tion', 'FIA', or any combination or variation of those words
15 or letters alone or with other words or letters as a business
16 name or part of a business name, or publishes, advertises, or
17 represents by any device or symbol or other means reason-
18 ably calculated to convey the impression that he or it has a
19 connection with or authorization from, or in any way repre-
20 sents or acts as agent for, or is insured or protected against
21 loss or insolvency by, the Department of Housing and Ur-
22 ban Development or the Federal Insurance Administration,
23 for the purpose of inducing or influencing any person to pur-
24 chase or with respect to the purchase or retention of insur-
25 ance; or".

1 HEARINGS

2 SEC. 12. (a) All hearings in which an insurer is a
3 principal party shall be held before a hearing examiner ap-
4 pointed by the Secretary in the Federal judicial district for
5 the State in which such insurer is domiciled unless the insurer
6 afforded the hearing consents to another place, and shall be
7 conducted in accordance with the provisions of chapter 5 of
8 title 5, United States Code. All hearings shall be public, un-
9 less the party afforded the hearing and the State insurance
10 authority jointly request a private hearing to protect the
11 public interest. After such hearing, and within ninety days
12 after the Secretary has notified the insurer that the case has
13 been submitted to him for final decision, the Secretary shall
14 render his decision (which shall include findings of fact upon
15 which his decision is predicated) and shall issue and cause to
16 be served upon each party to the proceeding an order or
17 orders consistent with the provisions of this section. Judicial
18 review of any such order shall be exclusively as provided in
19 subsection (b). Unless a petition for review is timely filed in
20 a court of appeals of the United States, as hereinafter pro-
21 vided in subsection (b), and thereafter until the record in
22 the proceeding has been filed as so provided, the Secretary
23 may at any time, upon such notice and in such manner as he
24 shall deem proper, modify, terminate, or set aside any such
25 order with permission of the court.

1 (b) Any party to the proceeding may obtain a review
2 of any order served pursuant to this subsection (other than
3 an order issued with the consent of the insurer), by filing in
4 the court of appeals of the United States for the circuit in
5 which the insurer is domiciled, or in the United States Court
6 of Appeals for the District of Columbia Circuit, within thirty
7 days after the date of service of such order, a written peti-
8 tion praying that the order of the Secretary be modified,
9 terminated, or set aside. A copy of such petition shall be
10 forthwith transmitted by the clerk of the court to the Sec-
11 retary, and thereupon the Secretary shall file in the court the
12 record in the proceeding, as provided in section 2112, title
13 28, United States Code. Upon the filing of such petition,
14 such court shall have jurisdiction, which upon the filing of
15 the record shall, except as provided in the last sentence of
16 subsection (a), be exclusive to affirm, modify, terminate, or
17 set aside, in whole or in part, the order of the Secretary.
18 Review of such proceedings shall be had as provided in
19 chapter 7 of title 5, United States Code. The judgment and
20 decree of the court shall be final, except that the same shall
21 be subject to review by the Supreme Court upon certiorari
22 as provided in section 1254, title 28, United States Code.
23 (c) The Secretary may, in his discretion, petition the
24 court of appeals of the United States for the circuit in which
25 the insurer is domiciled, or in the United States Court of

1 Appeals for the District of Columbia Circuit, for the enforce-
2 ment of any final order issued by the Secretary under this
3 section, and such court shall have jurisdiction and power to
4 order and require compliance therewith.

5 ADVISORY COMMITTEE

6 SEC. 13. (a) There is hereby established a Federal
7 Insurance Guaranty Advisory Committee composed of not
8 less than seven, nor more than eleven, members to be
9 appointed by the Secretary from among representatives of
10 the Federal and State governments, including State insur-
11 ance authorities, the insurance industry, and consumers. The
12 Special Assistant to the President for Consumer Affairs shall
13 be a member of such Committee and shall serve as Chairman.
14 The Committee shall elect a Vice Chairman of the
15 Committee.

16 (b) Each member of the Committee, other than the
17 Chairman, shall serve for a term of two years or until his
18 successor has been appointed, except that no person who is
19 appointed while a full-time employee of a State or the Fed-
20 eral Government shall serve in such position after he ceases
21 to be so employed unless he is reappointed. Any member
22 appointed to fill a vacancy occurring prior to the expiration
23 of the term for which his predecessor was appointed shall be
24 appointed for the remainder of that term.

25 (c) The Chairman shall preside at all meetings, and

1 the Vice Chairman shall preside in the absence or disability
2 of the Chairman. The Committee shall meet at the call of
3 the Chairman, or at the request of the Secretary, but not
4 less often than four times a year.

5 (d) The Committee shall advise and make recommen-
6 dations to the Secretary with respect to obtaining the co-
7 operation of insurers, industry groups, and Federal and State
8 agencies in the insurance guaranty program; improving the
9 effectiveness of the insurance guaranty program; and on
10 such general policy matters as may be appropriate.

11 (e) The members of the Committee shall not, by reason
12 of such membership, be deemed to be employees of the
13 United States, and such members, except those who are
14 regular full-time employees of the Government, shall receive
15 for their services as members per diem equivalent to the rate
16 for grade GS-18 of the General Schedule under section 5332,
17 title 5, United States Code, when engaged in the perform-
18 ance of their duties, and each member of the Committee shall
19 be allowed travel expenses, including per diem in lieu of
20 subsistence, as authorized by section 5703, title 5, United
21 States Code, for persons in the Government service employed
22 intermittently.

23 TREASURY LOANS

24 SEC. 14. (a) As authorized in appropriation Acts, and
25 such authorizations may be without fiscal year limitation,

1 the Secretary may borrow from the Secretary of the Treas-
2 ury, and the Secretary of the Treasury is authorized and
3 directed to lend to the Secretary, such funds as in the judg-
4 ment of the Secretary are required for the purposes of this
5 Act. Such loans shall bear interest at a rate determined by
6 the Secretary of the Treasury taking into consideration the
7 current average market yield on outstanding marketable obli-
8 gations of the United States with remaining periods to ma-
9 turity comparable to the average maturities of such loans.
10 For such purpose the Secretary of the Treasury is authorized
11 to use as a public debt transaction the proceeds of the sale
12 of any securities hereafter issued under the Second Liberty
13 Bond Act, as amended, and the purposes for which securities
14 may be issued under the Second Liberty Bond Act, as
15 amended, are extended to include such loans. Any such loan
16 shall be used by the Secretary solely in carrying out his
17 functions with respect to insurance. All loans and repayments
18 under this section shall be treated as public debt transactions
19 of the United States.

20 (b) Interest charged to the Secretary shall be an admin-
21 istrative expense of the Secretary and interest payments re-
22 ceived by the Secretary shall be regarded as income to be
23 used by the Secretary for operating and administrative ex-
24 penses.

1 FINANCING, BUDGET, AND AUDIT PROVISIONS

2 SEC. 15. (a) Funds are hereby authorized to be appro-
3 priated from time to time in such amounts as are necessary
4 to finance the establishment, maintenance, and operation of
5 the Federal insurance guaranty program.

6 (b) Amounts appropriated under the above authority,
7 together with the proceeds of loans advanced from the Treas-
8 ury Department, payments made by insurers upon assess-
9 ment by the Secretary, and any other receipts of the pro-
10 gram shall be administered as a separate fund in the Treasury
11 of the United States.

12 (c) The Secretary shall prepare annually and submit a
13 budget program as provided for wholly owned Government
14 corporations by title I of the Government Corporation Con-
15 trol Act (31 U.S.C. 847).

16 (d) The Secretary shall maintain an integral set of
17 accounts which shall be audited annually by the General
18 Accounting Office in accordance with the principles and pro-
19 cedures applicable to commercial transactions as provided by
20 title I of the Government Corporation Control Act (31
21 U.S.C. 850–851).

22 GENERAL POWERS

23 SEC. 16. In the performance of, and with respect to, the
24 functions, powers, and duties vested in him by the Act, the

1 Secretary, notwithstanding the provisions of any other law,
2 may—
3 (a) sue or be sued;
4 (b) without regard to sections 3648 and 3709 of
5 the Revised Statutes, as amended (31 U.S.C. 529 and
6 41 U.S.C. 5), and section 322 of the Act of June 30,
7 1932 (47 Stat. 412, as amended (40 U.S.C. 278a)),
8 enter into and perform contracts, leases, cooperative
9 agreements, or other transactions, on such terms as he
10 may deem appropriate, with any agency or instrumen-
11 tality of the United States, or with any State or agency
12 or political subdivision thereof, or with any person, firm,
13 association, or corporation and consent to modification
14 thereof, and make advance or progress payments in con-
15 nection therewith;
16 (c) without regard to sections 3648 and 3709
17 of the Revised Statutes, as amended (31 U.S.C. 529
18 and 41 U.S.C. 5), and section 322 of the Act of June 30,
19 1932 (47 Stat. 412, as amended (40 U.S.C. 278a)),
20 by purchase, lease, or donation acquire such real and
21 personal property and any interest therein, make ad-
22 vance or progress payments in connection therewith, and
23 hold, use, maintain, insure against loss, sell, lease, or
24 otherwise dispose of such real and personal property as

1 the Secretary deems necessary to carry out the purposes
2 of this Act;
3 (d) issue such rules and regulations as he deems
4 necessary to carry out the purposes of this Act;
5 (e) enter into such contracts, agreements, treaties,
6 or other arrangements without regard to section 3679
7 (a) of the Revised Statutes of the United States (31
8 U.S.C. 655(a)) as he may deem necessary to carry
9 out the purposes of the Act; and
10 (f) exercise all powers specifically granted by the
11 provisions of this Act and such incidental powers as
12 may be necessary to carry out the purposes of this Act.

91st CONGRESS
2D SESSION

S. 3542

A BILL

To authorize the Secretary of Housing and Urban Development to establish a Federal insurance guaranty program under the Federal Insurance Administrator to protect the American public against losses resulting from the insolvency of insurers, and for other purposes.

By Mr. COTTON

MARCH 4, 1970

Read twice and referred to the Committee on Commerce

[CONFIDENTIAL COMMITTEE PRINT NO. 1]

MARCH 10, 1970

Calendar No.

91st CONGRESS
2d SESSION

S. 2236

[Report No. 91–   ]

IN THE SENATE OF THE UNITED STATES

MAY 23, 1969

Mr. MAGNUSON (for himself, Mr. DODD, Mr. HART, Mr. HOLLINGS, Mr. INOUYE, Mr. MOSS, and Mr. PASTORE) introduced the following bill; which was read twice and referred to the Committee on Banking and Currency

MAY 27, 1969

The Committee on Banking and Currency discharged, and referred to the Committee on Commerce

---

A BILL

To create a Federal Insurance Guaranty Corporation to protect the American public against certain insurance company insolvencies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Insurance Guar-
4 anty Corporation Act".

J. 41–781

1 DEFINITIONS

2 SEC. 2. As used in this Act—

3 (1) The term "insurer" means any enterprise engaged
4 in the business of issuing property, casualty, or surety in-
5 surance policies in interstate commerce or engaged in the
6 business of issuing property, casualty, or surety policies which
7 are reinsured (in whole or in part) in interstate commerce.

8 (2) The term "local insurer" means any enterprise
9 engaged in the business of issuing property, casualty, or
10 surety insurance policies solely within one State.

11 (3) The term "participating insurer" means any enter-
12 prise whose property, casualty, or surety insurance policies
13 are guaranteed under this Act.

14 (4) The term "policy" means (a) any contract of
15 property, casualty, or surety insurance, including any en-
16 dorsements thereto and without regard to the nature or form
17 of the contract or endorsements, insuring against legal liability
18 and/or loss contingencies, other than those provided for by
19 life, accident and health, or title insurance; (b) any agree-
20 ment written by the insurer or reinsurer in favor of a self-
21 insurer; or (c) any agreement written by an insurer or re-
22 insurer in favor of another insurer assuming 100 per centum
23 of all obligations of the ceding insurer.

24 (5) The term "policy required to be guaranteed" means
25 any property, casualty, or surety policy issued or delivered

1 in the United States by any insurer (or its agent) to any
2 person (including any individual, partnership, association,
3 or corporation).

4 (6) The term "net direct premiums written" means di-
5 rect gross premiums written on property, casualty, and
6 surety insurance policies required to be guaranteed under
7 this Act less return premiums thereon and dividends paid
8 to policyholders on such direct business.

9 (7) The term "policyholder claim" means (a) a claim
10 of a policyholder or insured or his assignee within the
11 coverage of a policy, arising out of an occurrence wherein
12 such policyholder or insured suffered damage or is subject
13 to liability for damages within the coverage of the policy,
14 or (b) a claim by a policyholder or insured or his assignee
15 for return premium arising out of the termination of the
16 policy by reason of insolvency.

17 (8) The term "Administrator" means the Administra-
18 tor of the Federal Insurance Guaranty Corporation.

19 (9) The term "Fund" means the Federal Insurance
20 Guaranty Fund as described in section 9 (b).

21 (10) The term "interstate commerce" means trade or
22 commerce among the several States, or between the District
23 of Columbia or any possession of the United States and any
24 State or other possession, or within the District of Columbia.

25 (11) The term "State" means any State, any possession

1 of the United States, the District of Columbia, and the Com-
2 monwealth of Puerto Rico.
3 (12) The term "State supervisory authority" means the
4 agency or individual of the State of domicile of the insurer
5 having responsibility for regulating the business of insurance
6 within that State: *Provided*, That in the case of an insurer
7 organized under the laws of a foreign country that has no
8 domicile in the United States the "State supervisory author-
9 ity" means the agency or individual of the State in which
10 policies required to be guaranteed are primarily issued or
11 delivered.

12 CREATION OF CORPORATION

13 SEC. 3. There is hereby created a Federal Insurance
14 Guaranty Corporation (hereinafter referred to as the "Cor-
15 poration") which shall guarantee, as hereinafter provided,
16 the contractual performance of participating insurers and
17 which, in connection therewith, shall have the powers here-
18 inafter granted.

19 MANAGEMENT OF CORPORATION

20 SEC. 4. (a) ADMINISTRATOR.—The management of the
21 Corporation shall be vested in an Administrator appointed by
22 the President, by and with the advice and consent of the
23 Senate. The Administrator shall hold office for a term of six
24 years, except that any person chosen to fill a vacancy shall
25 be appointed onl[illegible]red term of the person whom

1 he shall succeed: *Provided, however*, That upon the expira-
2 tion of his term of office the Administrator shall continue to
3 serve until his successor shall have been appointed and shall
4 have qualified. The Administrator shall be ineligible during
5 the time he is in office and for two years thereafter to hold
6 any office, position, or employment in any participating in-
7 surer; and he shall not be an officer or director of any par-
8 ticipating insurer or hold stock in any participating insurer;
9 and before entering upon his duties as Administrator he shall
10 certify under oath that he has complied with this requirement
11 and file such certification with the Secretary of the Cor-
12 poration.

13 (b) (1) There is hereby established an Advisory Com-
14 mittee consisting of eleven members appointed by the Ad-
15 ministrator. Of the members of the Committee, one shall be
16 the Special Assistant to the President on Consumer Affairs,
17 four shall be selected from among representatives of the pri-
18 vate insurance industry (including one representative of the
19 reinsurance industry), four shall be representatives of State
20 insurance authorities, and two shall be consumer representa-
21 tives of the general public.

22 (2) The Administrator shall designate a Chairman and
23 a Vice Chairman of the Committee.

24 (3) Each member shall serve for a term of two years
25 or until his successor has been appointed, except that no per-

1 son who is appointed while a full-time employee of a State
2 or the Federal Government shall serve in such position after
3 he ceases to be so employed, unless he is reappointed.
4 (4) Any member appointed to fill a vacancy occurring
5 prior to the expiration of the term for which his predecessor
6 was appointed shall be appointed for the remainder of that
7 term.
8 (5) The Chairman shall preside at all meetings, and the
9 Vice Chairman shall preside in the absence or disability of
10 the Chairman. In the absence of both the Chairman and
11 Vice Chairman, the Administrator may appoint any member
12 to act as Chairman pro tempore. The Committee shall meet
13 at such times and places as it or the Administrator may fix
14 and determine, but shall hold at least four regularly scheduled
15 meetings a year. Special meetings may be held at the call
16 of the Chairman or any three members of the Committee,
17 or at the call of the Administrator. A majority of the mem-
18 bers shall constitute a quorum for the transaction of business.
19 (6) The Committee shall review general policies of
20 the Corporation and advise the Administrator with respect
21 thereto, assist in obtaining the cooperation of insurers, in-
22 dustry groups, and Federal and State agencies, consult with
23 and make recommendations to the Administrator with
24 respect to carrying out the purposes of this Act, and perform
25 such other functions as the Administrator may, from time to

1 time, assign. The written reports and recommendations of the
2 Committee shall be made available by the Administrator to
3 the public.
4 (7) The members of the Committee shall not, by reason
5 of such membership, be deemed to be employees of the
6 United States, and such members, except the one who is a
7 regular full-time employee of the Government, shall receive
8 for their services, as members, the per diem equivalent to
9 the rate for grade GS-18 of the General Schedule under
10 section 5332 of title 5, United States Code, when engaged
11 in the performance of their duties, and each member of the
12 Committee shall be allowed travel expenses, including per
13 diem in lieu of subsistence, as authorized by section 5703 of
14 such title for persons in the Government service employed
15 intermittently.
16 INCORPORATION; POWERS
17 SEC. 5. (a) Upon the date of enactment of this Act, the
18 Corporation shall become a body corporate and shall be an
19 instrumentality of the United States, and as such shall have
20 power—
21 (1) to adopt, alter, and use a corporate seal;
22 (2) to have succession until dissolved by an Act of
23 Congress;
24 (3) to make contracts, and execute all instruments
25 necessary and appropriate in the exercise of its powers;

1 (4) to sue and be sued, complain and defend, in
2 any court of law or equity, State or Federal. All suits of
3 a civil nature at common law or in equity to which the
4 Corporation shall be a party shall be deemed to arise
5 under the laws of the United States, and the United
6 States district courts shall have original jurisdiction
7 thereof without regard to the amount of controversy;
8 and the Corporation may, without bond or security, re-
9 move any such action, suit, or proceeding from a State
10 court to the United States district court for the district
11 or division embracing the place where the same is pend-
12 ing by following any procedure for removal now or here-
13 after in effect. No attachment or execution shall be issued
14 against the Corporation or its property before final judg-
15 ment in any suit, action, or proceeding in any State,
16 county, municipal, or United States court. The Adminis-
17 trator shall designate an agent upon whom service of
18 process may be made in any State, territory, or jurisdic-
19 tion in which any participating insurer does business;
20 (5) to appoint through its Administrator such offi-
21 cers, employees, attorneys, agents, adjusters, examiners,
22 and other persons as may be necessary for the perform-
23 ance of its duties, to define their duties, fix their com-
24 pensation, require bonds of them and fix the penalty
25 thereof, and to dismiss at pleasure such officers or em-

1 ployees. Nothing in this chapter or any other Act shall
2 be construed to prevent the appointment and compen-
3 sation as an officer or employee of the Corporation of any
4 officer or employee of the United States in any board,
5 commission, independent establishment, or executive de-
6 partment thereof;
7 (6) to prescribe through its Administrator bylaws
8 not inconsistent with law, regulating the manner in
9 which its general business may be conducted and the
10 privileges granted to it by law may be exercised and
11 enjoyed;
12 (7) to exercise by its Administrator, or duly
13 authorized officers or agents, all powers specifically
14 granted by the provisions of this Act, and such inci-
15 dental powers as shall be necessary to carry out the
16 powers so granted;
17 (8) to make examinations of and to require in-
18 formation and reports from any insurer or local insurer
19 making application for guaranty status in accord with
20 subsection (f) of section 6 of this Act; and
21 (9) to prescribe by its Administrator such rules and
22 regulations as it may deem necessary to carry out the
23 provisions of this title.
24 (b) No individual, association, partnership, or corpo-

1 ration, other than the Corporation, shall hereafter use the
2 words "Federal Insurance Guaranty Corporation" or any
3 combination of such words, as the name or part thereof
4 under which he or it shall do business. Any violation of
5 this subsection shall be punishable by a fine of not ex-
6 ceeding $1,000 for each day during which such violation is
7 committed.

8 ADMINISTRATION

9 SEC. 6. (a) The Administrator shall administer the af-
10 fairs of the Corporation fairly and impartially and without
11 discrimination. The Administrator shall determine and pre-
12 scribe the manner in which its obligations shall be incurred
13 and its expenses allowed and paid within the limitations
14 imposed by this Act. The Corporation shall be entitled to
15 the use of the United States mails in the same manner as
16 the executive departments of the Government and, with the
17 consent of the head of any department or agency of the
18 Federal Government, or of any State government, may avail
19 itself of the use of information, services, and facilities thereof
20 in carrying out the provisions of this Act.

21 (b) GUARANTY STATUSES.—Any insurer or local in-
22 surer issuing policies guaranteed under this Act shall be
23 placed in one of two guaranty statuses characterized as either
24 "temporary guaranty status" or "permanent status." Any
25 participating insurer shall inform the purchaser prior to pur-

1 chase of its guaranty status and shall prominently display its
2 guaranty status on each and every guaranteed policy it issues
3 in accordance with regulations promulgated by the Cor-
4 poration.

5 (c) APPLICATION FOR GUARANTY STATUS.—Each in-
6 surer shall, and each local insurer may, make application to
7 the Corporation for guaranty status under this Act. Such ap-
8 plication shall be in such form and contain such information
9 as the Corporation shall by regulation prescribe.

10 (d) APPROVAL OF APPLICATION AND ASSIGNMENT OF
11 GUARANTY STATUS.—

12 (1) Any insurer or local insurer making application
13 to the Corporation in the prescribed manner shall be
14 granted temporary guaranty status if that application is
15 certified by the State supervisory authority of the appli-
16 cant. Such certification shall state that the applicant is
17 conducting its business in a sound and solvent manner
18 and, in determining whether such certification shall be
19 made, the State supervisory authority shall give con-
20 sideration, along with such other factors as it may deem
21 necessary and appropriate, to the applicant's capital and
22 surplus, reasonableness of operational expenses, premium
23 writings are related to surplus, adequacy of loss and ex-
24 pense reserves, reinsurance, investment portfolio, and
25 managerial qualifications.