

56

HJ : FOLDER 1A - HB 174

0072

DAY CARE

(Continued from page 77)

by President Nixon included a request for funds to increase day care facilities for the children of welfare mothers so that these mothers could take jobs. Our country is far behind many others in offering this kind of help to its citizens. Denmark, Sweden, Germany, England, Russia, France, and Israel have had government-supported day care centers for a long time.

Then, of course, a sizable number of women work not to provide the essentials of life, but the highly desirable extra good things. And some women work because it's important to them as people to pursue a particular business or profession, or engage in a creative activity that means a lot to them.

Whatever their reasons for working, mothers of young children need more than just babysitting services. Day care centers should foster—and good ones do—psychological, physical, emotional, and social development of the youngsters who attend them. A good day care center is not a second-best arrangement. In fact, the Child Welfare League of America believes that good centers should be freely available for all preschoolers, whether or not their mothers work, and that all parents should have the option of sending their youngsters to such a center.

What then do good day care programs provide? Where should the center be located? What kind of space, equipment, program, and staffing should it have?

First, of course, the center should be subject to licensing and supervision by a community health agency. In New York City all preschool programs, public and private, involving more than a few children are required to be licensed by the New York City Health Department's Division of Day Care, which insists that certain standards be maintained with regard to food, heat, ventilation, safety and sanitary facilities. The Division also limits the number of children a center is allowed to accommodate, depending on its space, and requires a certain number of properly trained teachers, depending on the number and age of the youngsters enrolled.

For the convenience of both parents and youngsters, it's best if the center is either close to where the family lives or near where the mother works. This means that a big city should have centers located near the heart of all large residential and commercial areas. Smaller communities, of course, will need fewer centers. The center should have plenty of space, both indoors and out, and plenty of sturdy play equipment so that the children can jump, run, climb, and play freely.

Even more important than the plant and equipment is the staff. Young children develop best when they are cared for mainly by one

person. This is often difficult to arrange in a day care center, but every effort should be made to provide a primary teacher for each child—one person, that is, with whom the child can form a very special attachment, a closer bond than he forms with other members of the staff.

Clearly, the more the staff members know in advance about a youngster, the easier it is for them to understand and respond to his needs. For this reason, when a mother is preparing to enroll her child in a day care center, she's usually asked about any special habits her child may have. I remember sitting in on one such conference when a mother was telling a staff worker, somewhat apologetically, that her 18-month-old son still took his bottle when he lay down for his nap. "I guess he's a little old for a bottle," she said, "but it seems to comfort him and help him go to sleep." The center worker put the mother at ease by saying, "If he's accustomed to taking a bottle at home when it's naptime, then of course we'll give it to him here."

The people who staff good day care centers know that what may be an ideal provision for one child may be far less suitable for another. Staff members should be able to interpret each child's behavior according to his unique experiences and capacities. I am reminded of Andrew, a little boy of 18 months. His father called me in desperation one night to tell me that he had just learned that his wife had tuberculosis and would need to be in the hospital for several months. The Smiths were new in the community; there were no relatives they could call on for help. Day care seemed to be the only possible solution while the father was at work. Fortunately, a new day care center had just been opened in their neighborhood. The director, Mrs. Summer, had spent several years in England working with Anna Freud in the Hampstead Nursery School. She was particularly sensitive to the individual needs of each child, and organized her staff so that each youngster would have one staff member as his special substitute mother. Andrew did react as might be expected. At first he was often disconsolate, withdrawn, and depressed. Sometimes he would erupt in explosive temper tantrums crying and kicking. It took many weeks for Andrew to realize he could trust his teacher and that she would always look after him. But gradually he began to relax and eventually he became quite sociable, happy, and outgoing again.

What is the daily program in a day care center? In most centers, the first half hour is generally spent just settling the children in. After that, there's usually some kind of organized play—singing, dancing to an accompaniment of rhythm instruments, or playing games. Of course not every youngster may be ready or will-

ing to take part in a group activity. When a child prefers to play in the sandbox by himself or push a truck around, the wise leader leaves him alone to do so. She'll invite him to join the others, but she won't insist, knowing that it's best to let youngsters wait until they're ready to cope with the complexities of getting on with other children.

When youngsters are able to enjoy group play, it can be very valuable to them, teaching them to share toys and to understand and come to like others, and themselves. Among the things children learn more easily through group play in a center than they may at home are that there are better and happier ways to get something than by fighting over it, and that they can count on being treated fairly if they act fairly, too.

Having their children attend a day care center regularly is also a valuable educational experience for parents. Mothers often learn new ways of working with their children by observing the ways the staff members handle the youngsters. A trained day care or nursery teacher helps the children develop verbal skills, for example, by listening attentively to them when they talk and by answering their questions fully and kindly.

A feeling of mutual trust often develops between parents and the director or teachers at a day care center. Many mothers and fathers have no one with whom they can discuss family problems, practical and emotional. Once they become comfortable in a day care setting, they often find it helpful to talk over their concerns with a member of the school staff. Since many centers work closely with a family case work agency or a child guidance clinic, it's usually easy to obtain professional services when problems come up which need specialized counseling.

Day care centers are realizing more and more the full potential of the services they can offer. Health care, for example, is an important service which is being expanded in many centers. Formerly, health care at a center consisted only of a relatively superficial physical examination of the child on his admission, a record of immunizations and, following an illness, the requirement that a physician should state that the child is well enough to return to the center. Increasingly, however, child care centers now have a physician or a trained nurse as a regular, part-time member of their staff. He can spot children who may be suffering from anemia, allergies, malnutrition, visual and hearing deficiencies, learning disabilities—conditions which can often be treated with great success if they're recognized early.

Although the President's request for funds to increase the day care services available to mothers on welfare is a step in the right direction, it's not nearly a big enough one, and has been criticized by many day care specialists as having been made for the wrong reason. Funds should be provided, they say, not simply to enable mothers on welfare to go to work, but because money spent on early childhood development is the best investment our country can make.

At the present time there are youngsters on center waiting lists in almost every city in the nation. Because the need for day care service is so great, some businessmen have recently begun to organize brand-name "chain" day care centers, operated for profit, and are selling franchises to operate these "packaged" centers. Although such centers may be well equipped and well run, educators and welfare specialists are greatly concerned about this trend, fearing that the urge to make a profit may take precedence over the needs of the families who subscribe to the service. Instead of relying on such commercial enterprises to meet the need for expanded day care services, specialists in early childhood education recommend strongly that parents write their Congressmen to ask for more publicly supported day care centers for the increasing number of American families who need and want them. ■

TOM THUMB MONTESSORI SCHOOLS
833 Gambell St.,
Anchorage, Alaska 99501

February 12, 1971

SB 124

~~SB~~

Mr. Bill Moran,
Juneau, Alaska

Dear Representative Moran:

We feel that the education of three and four year olds should fall under the jurisdiction of the State Dept. of Education rather than Health and Welfare. The Nebraska State Supreme Court ruled (Sept. 1970) in favor of Montessori as a school rather than a business. I quote two other rulings:

"Dec. 1969 - Ray Page, Sup't. of Public Education, State of Ill.: "There is no question that Montessori preschools are truly 'Schools' as distinguished from 'Centers' where the main purpose is child care. I hope this interprets for you the position of the Supt. of Public Instruction."

"Jan. 1970, N. Eugene Shoemaker, Chief, Div. of Private Academic Schools, Dept. of Public Instruction, Commonwealth of Penn.: "The State Board of Private Academic Schools has recognized Montessori as a method of instruction in the preschool area and primary grades in Pennsylvania for the private licensed school area."

Cognitive psychologists and educators are well aware that the child's intelligence grows as much during his first four years of life as it will grow in the next thirteen years. During this period of extra-rapid growth, the environment exerts its most powerful effect.

Tom Thumb Montessori Schools have worked with three and four year olds, as well as kindergarten and grade school under the Alaska State Dept. of Education for the past fifteen years.

The Dept. of Education has the knowledge, resources and personnel to better work with these young children who are in need of a cognitive learning program. Will you please consider voting for the nursery school children ages 3 and 4 to come under the jurisdiction of the State Dept. of Education? This would also be an advantage to the small bush schools who would then be enabled to run their pre-school program in conjunction with the local public school, perhaps sharing building facilities, teachers aides, lunch program and the ordering of supplies.

For the past two years I have been an Instructor for the University of Alaska, Anchorage Branch, as well as Directress for the six Montessori Schools. In these classes we have done a great deal of fact finding as to what is currently being done in the Pre-school area. I will be in Juneau Feb. 24, 25, 26 and 27th. May I have an opportunity to talk with you concerning the needs of young children?

Sincerely,

Margaret Green
Margaret Green

TOM THUMB MONTESSORI SCHOOLS

833 GAMBELL ST.

ANCHORAGE, ALASKA 99501

SB 124

OFFICE OF THE DIRECTRESS

March 27, 1971

Representative William J. Moran,
Capitol Bldg.,
Juneau, Alaska

Dear Representative Moran,

I had written to you last month concerning Tom Thumb Montessori Schools desiring to continue operating under the Dept. of Education rather than Health and Welfare. We feel that the enclosed Senate Bill No. 124 covers the needed legislation with the amendment of wording "whose major function is educational" as suggested by Dr. Cliff Hartman, Commissioner of Education. We also feel ages 3 through 5 should be inserted as this is the preelementary age referred to.

Sincerely,

Margaret Green
Margaret Green,
School Directress

Encl.

MONTESSORI - SCHOOL OR BUSINESS?

After almost a year of litigation stemming from a suit charging violation of zoning laws brought against Mrs. LaVerne Flasbeck, Montessori Educational Center, Omaha, in which the plaintiffs alleged a business, rather than a school was being operated, the Nebraska State Supreme Court ruled (Sept. 1970) in favor of the school, in this opinion:

"The evidence before the trial court shows that the Montessori Educational Center school 'is a school program that is aimed primarily to introduce a child to a lifetime of creative learning. It aims to develop in them the tools for learning, such as curiosity, extended powers of concentration, a positive attitude toward learning itself, and the habits of attending, of initiating and completing tasks. Perhaps the central idea is to surround the child with an appropriate curriculum of learning materials and tasks that enable the child to acquire the conviction that he can learn on his own, and build up within him a positive attitude toward learning and self-confidence in himself as a learner.'"

Other rulings on this subject:

Dec. 1969, Ray Page, Sup't. of Public Education, State of Ill.:

"there is no question that the Montessori preschools are truly 'schools' as distinguished from 'Centers' where the main purpose is child care. I hope this interprets for you the position of the Office of the Superintendent of Public Instruction."

Jan., 1970, N. Eugene Shoemaker, Chief, Div. of Private Academic Schools, Dep't. of Public Instruction, Commonwealth of Penn.: "The State Board of Private Academic Schools has recognized Montessori as a method of instruction in the preschool area and primary grades in Pennsylvania for the private licensed school area."

TOM THUMB MONTESSORI SCHOOLS
833 Gambell St.,
Anchorage, Alaska 99501

March 4, 1971

124

Representative Wm. J. Moran
Capitol Bldg.,
Juneau, Alaska

Dear Representative,

For the past fifteen years our Tom Thumb Private School has operated under the jurisdiction of the Dept. of Education. We have children from the ages of three through eleven. Senator Thomas's Bill No. 32 would place education of three and four year olds in public schools under the jurisdiction of the State Dept. of Education but doesn't mention private schools. We feel very strongly that this should also include private schools such as ours, who have an educational program for three and four year olds and hire certificated teachers.

Enclosed is a direct quotation from American Montessori Society News 1970 stating that Nebraska, Illinois and Pennsylvania consider Montessori Schools as schools rather than day care centers.

Will you please support any forthcoming legislation for three and four year olds of private schools to be placed under the jurisdiction of the State Dept. of Education rather than Health and Welfare.

Dr. Cliff Hartman is in agreement with our educational program for three and fours remaining under his jurisdiction along with our grade school. As ours is an ungraded open concept school, threes and fours cannot be entirely separated from Kindergarten through sixth grade, and we cannot conceivably work under two separate departments.

Any comments you may have after talking with Dr. Hartman will be greatly appreciated.

Sincerely,
Margaret Green
Margaret Green,
School Directress

Encl.

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

Original sponsor: Groh

1 IN THE SENATE

BY THE HEALTH, WELFARE AND
EDUCATION COMMITTEE

2 CS FOR SENATE BILL NO. 124

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to jurisdiction over prekindergarten
7 schools."

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

9 * Section 1. AS 47.35.080(4) is amended to read:

10 (4) "nursery" means an establishment providing care and
11 services for any part of the 24-hour day for a child not related by
12 blood or marriage to the owner or operator, but does not include any
13 establishment whose primary purpose is educational.

14 * Sec. 2. AS 14.07.020 is amended by adding a new paragraph to read:

15 (3) ~~In cooperation with the Department of Health and Welfare~~
16 ~~exercise general supervision over public and private preelementary~~
17 ~~(ages 5) whose primary function is educational~~
18 ~~schools and over the educational component of nurseries as defined~~
19 in AS 47.35.080(4).

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE 586-7477
JUNEAU, ALASKA 99801

AL437

ALLIED EDF

SB 136
1971 APR 7 PM 4:30

ANCHORAGE ALASKA 7 42 1P ASI

HONORABLE WILLIAM MORAN

0990

HOUSE OF REPRESENTATIVES JUN

BELIEVE PUBLIC UTILITY LAW AMENDMENT SB136

UNWORKABLE. MR HALL SO TESTIFIED. ANCHORAGE

NATURAL GAS DOES NOT OBJECT TO UNDERGROUND OIL

UTILITIES BEING EXEMPT FROM PRICE AND TARIFF

FILING NOR TO EXEMPTION FROM REQUIRING AREA

CERTIFICATES NOR EXEMPT FROM ALL OR MOST ALL

REPORTING. COMMISSION ALREADY HAS POWER TO GRANT

EXEMPTIONS IN WHOLE OR IN PART TO UNDERGROUND

OIL UTILITIES AS 42.25 691 PERMITS CLASSIFICATION

AND VARYING ALL REQUIREMENTS. ALSO 42.25/711 AUTHORIZES

COMMISSION TO EXEMPT IN WHOLE OR IN PART. SO WOULD APPEAR

PROPOSED AMENDMENT NOT NECESSARY. ALTHOUGH COMMISSION CAN WAIVE

PRICE AND AREA REGULATION BY ITS OWN ACTION BUT SHOULD

RETAIN POWER TO ENFORCE SAFETY STANDARDS AND CORRECT

SERVICE DEFICIENCIES OR OTHER DISCRIMINATIONS OR PUBLIC

HAS NO PROTECTION OR FORUM TO BE HEARD. SEEMS UNFAIR TO

SUBMIT GAS AND ELECTRIC UTILITIES TO FULL REGULATION

AND EXEMPT UNDERGROUND OIL UTILITIES FROM UNFAIR

COMPETITION AND INCENTIVES. DISCRIMINATORY SERVICE PRACTICES

WITH COMPLETE EXEMPTION UNDERGROUND OIL UTILITIES SERVING

APPROX 4,000 HOMES IN SUB-DIVISIONS AND TRAILOR COURTS

ANCHORAGE AREA ON UNDERGROUND DISTRIBUTION

SYSTEMS. UNCLEAR IN BILL AS WRITTEN WHETHER UNDERGROUND

PROPANE DISTRIBUTION SYSTEMS SERVING THE PUBLIC WOULD BE

EXEMPT OR NOT. THE BILL WOULD EXEMPT OIL SYSTEMS AS

TO LARGE AND SMALL SUB-DIVISIONS TO SAME EXTENT AS TRAILOR

COURTS ALTHOUGH NOT MENTIONED IN LEGISLATIVE PURPOSE CLAUSE.

PAUL ROEISON

AS 42.25 691 42.25/711 4,000

(27).

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE 586-7477
JUNEAU, ALASKA 99801

SB 205

#V

AL449

AFA126 PDF

1971 APR 8 PM 6 02

ANCHORAGE ALASKA 3 142P AST

REPRESENTATIVE WILLIAM J MORAN

JUN

PRIOR TO ANY LEGISLATIVE ACTION ON SB205 IT IS
URGENT THAT STATEWIDE-PUBLIC HEARINGS BE
SCHEDULED. IF ENACTED AS WRITTEN THIS BILL WOULD
SIGNIFICANTLY INCREASE LOCAL TAXES.

RICHARD R GAY PRESIDENT ANCHORAGE BOROUGH SCHOOL BOARD
AND JOE D MONTGOMERY SUPERINTENDENT ANCHORAGE
BOROUGH SCHOOL DISTRICT

SB205

(15).

MEMORANDUM**State of Alaska**

TO: Members of the Alaska State Senate
and House of Representatives

DATE : April 29, 1971

FROM: Frederick McGinnis *F. McG.*
Commissioner
Department of Health and Welfare

SUBJECT: Alaska State White House
Conference on Aging

The month of May, 1971 has been proclaimed by the President of the United States and the Governor of Alaska as Senior Citizen Month. The theme for this month will be "Towards a National Policy on Aging." Alaska, like forty-seven other states, has scheduled its State White House Conference on Aging during this month. The Alaska State White House Conference is to be held in the City of Anchorage on May 20, 21, and 22. The Anchorage Travelodge has been selected as the Conference Headquarters.

The purpose of the Conference is to participate in the development of a National Policy on Aging. The results of the State Conference will be the drafting of Policy Recommendations, which will become a part of the State of Alaska's report to the National White House Conference. The National White House Conference on Aging is to be held in Washington, D.C. the week of November 28, 1971.

Delegates attending the White House Conference will represent geographical areas of Alaska, the various ethnic groups of people residing in the State, the consumers of service, as well as governmental and non-governmental agencies who are providing services or who have special interests in the older Alaskan.

We would like to take this opportunity to extend an invitation to you to attend and participate in the State White House Conference on Aging and to join with other Alaskans in their efforts to "Make Loads a Little Lighter and Life a Little Brighter for All Older Alaskans."

FMcG/HAH/be
cc: Office of Aging

Magistrates' salaries



Alaska Court System
State of Alaska

MAGISTRATE SUPERVISOR
JIM I. MARTIN

OFFICE OF ADMINISTRATIVE DIRECTOR

941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

April 22, 1971

JIM/104

The Honorable William J. Moran
Alaska State House of Representatives
Pouch V State Capitol Building
Juneau, Alaska 99801

Dear Representative Moran:

I am aware that the General Fund Bill is now before the House. The Alaska Court System's budget allocation presently submitted by the House Finance Committee is about \$6,800,000. The original budget request by the Alaska Court System was \$9,706,000.

A part of the original budget request was a projected increase in magistrates' salaries which would total \$81,000. The General Fund Bill presently limiting the budgetary allocation to the Alaska Court System to about \$6,800,000 is a drastic budget cut from the original request. This would indicate that the Alaska Court System would have difficulty allowing the projected increases for all magistrates in the amount that would total \$81,000.

I feel that it is most urgent that the court system be allowed a sufficient budget to ensure the projected magistrates' salary increases. The justification for the proposed magistrates' salary increases substantiates the ever-increasing workload placed on all magistrates throughout the state. Many of our magistrates are presently working at salaries unjustly proportionate to their actual workload. These magistrates are continuing to work in hopes that their salaries will be substantially increased to justly compensate them.

The following are examples of magistrates' salaries presently earned with projected monthly salary increases. Please be aware that all magistrates have a minimum base salary of \$3,500 per year and any additional pay is computed at how many man months per year the magistrate has to work. Also be aware that the magistrates are having ever-increasing workloads. The magistrate at Skagway presently earns a monthly salary of \$293.83. Her projected monthly salary increase should be \$400 to justly compensate her

for present work done. The magistrate at Kotzebue presently earns \$585 per month. His projected monthly income should be \$716.67 to justly compensate him for present work done. The magistrate at Dillingham presently earns \$616.17. His projected monthly income should be \$900 per month to justly compensate him for present work done. The magistrate at McGrath presently earns \$223.08. His projected monthly income should be \$341.66 to justly compensate him for present work done.

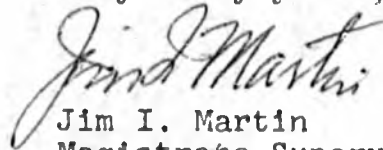
Please be aware that the above examples are only a sampling of the four judicial districts. Also please be aware that the projected increase for salaries is substantially more per month than the magistrate presently receives and that they are definitely not compensated for their present workload. The examples given above are typical of all the magistrates in Alaska.

If, in the final analysis, the Alaska Court System is limited to a budget of \$6,800,000, major priority programs for the 1971-72 fiscal year may have to be cut. It would appear that a just salary increase for magistrates would be doubtful.

I have read in the Anchorage Times that a bill may be proposed to the House to raise state employees' salaries by five percent. Magistrates as judicial officers will not be eligible to participate in that salary increase unless they were specifically mentioned in that bill. If the magistrates are mentioned in the bill, a five percent salary increase would nowhere meet their present need to compensate them for work done. This is readily apparent by the proposed salary increases I have given above.

I solicit your support to properly evaluate the Alaska Court System's fiscal budget and consider making a substantial increase in that budget so that the magistrates may be ensured of a salary increase. I feel that it is imperative that a judicial officer be properly compensated for the amount of work he does in order to ensure his complete effort in adjudicating matters brought before his court. I feel that your consideration in this regard is most urgent to ensure justifiable salary increases for all the magistrates in Alaska.

Very truly yours,



Jim I. Martin
Magistrate Supervisor

JIM:jn

ADMINISTRATIVE

TIVE

INQUIRIES

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K — STATE CAPITOL
JUNEAU 99801

April 28, 1971

The Honorable William J. Moran
Chairman, House Judiciary Committee
Alaska State House of Representatives
Juneau, Alaska 99801

Dear Mr. Chairman:

This replies to your letter and attachments of April 22, 1971, addressed to the Attorney General, relevant to the House Judiciary Committee Report of May 31, 1970, relating to the Department of Public Safety's "administrative inquiries".

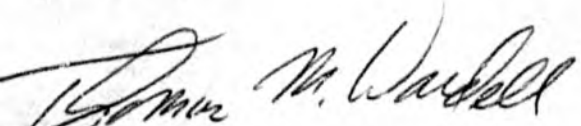
It is my understanding from speaking with Commissioner Emery Chapple this date that the Department of Public Safety has modified its regulations relating to "administrative inquiries" and that a copy of the modified regulations have been forwarded to your committee.

If you or the committee have any further questions on this matter, please contact me at your earliest convenience.

Very truly yours,

JOHN E. HAVELOCK
ATTORNEY GENERAL

By



Thomas M. Wardell
Deputy Attorney General

JEH:TMW:agm

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N — STATE CAPITOL
JUNEAU 99801

April 23, 1971

The Honorable William J. Moran
Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V, Capitol Building
Juneau, Alaska 99801

Dear Representative Moran:

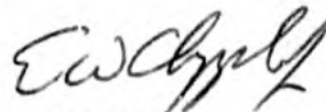
Attached is a copy of our Section 115.020, Administrative Inquiry, as it existed at the time the Judiciary Committee made its recommendations. Also attached is a copy of our Section 115.020 entitled Investigative Inquiry, which is a revision of the previous regulation that was made and distributed on June 1, 1970.

Whereas this matter had not been given a great deal of thought by me previously, a close reading of the revision appears to me to remove the objections that the Judiciary Committee seemed to have.

It is my view that any manual of regulations, its intents and ultimate uses is pretty much dependent upon those persons administering it, and I assure you that it is my policy to see that these matters are carried out, when they arise, in as proper a manner as possible.

I trust this answers your question satisfactorily. Please do not hesitate to call upon me if further discussion is desired.

Very truly yours,



Emery W. Chapple, Jr.
Commissioner

Encs.

CHAPTER 115

REVIEW, HEARINGS AND APPEALS

Sec. 115.010 PROCEDURES (Re: Rule 12 01.0, State Personnel Rules)

- A. Any member in the classified service may seek intra-departmental review of any grievance as follows:
1. The member shall present his grievance in writing to, and discuss it with, his immediate supervisor.
 2. If not satisfied, he may proceed to the next superior.
 3. If still not settled to member's satisfaction, he may, within 10 days, submit grievance in writing and through chain of command, to the Commissioner. The Commissioner shall, within 15 days after receipt of the written grievance, provide the member with his written decision concerning the matter.

Sec. 115.020 INVESTIGATIVE INQUIRY

- A. The Commissioner may direct that an investigative inquiry be made into the circumstances and facts of the charges made against any member which are or may be considered grounds for disciplinary action. The inquiry may be made prior to any disciplinary action or after summary disciplinary action.

An investigative inquiry is not an accusatory nor a decision making body. It is, as the title implies, an investigative body charged with the responsibility for impartially obtaining facts and circumstances surrounding an allegation, and presenting the findings to the Commissioner for consideration during the discharge of his executive responsibilities as the appointing Authority and administrative head of the department.

- B. Inquiry members shall consist of the Commissioner or his designee and other personnel designated by him, provided at least one (1) member is of equal rank with the member charged.
- C. The Commissioner may, but need not, request the presence of the accused in writing. Oral

notice to attend given by any superior is sufficient.

- D. An accused member ordered to appear shall do so or be cited for additional disciplinary action or such other action directed by the Commissioner.
- E. The substance of testimony shall be mechanically or visually recorded and in addition reported on Department forms as prescribed in Chapter 113, Section 020. The recommendations of the individual members conducting the inquiry and the basis for the recommendation shall accompany the report. Such reports shall be forwarded to the Commissioner within five (5) days following the inquiry and the Commissioner shall notify the accused of his final decision within ten (10) days after the inquiry. The notice to the accused shall be as prescribed in Chapter 114.050.
- F. The accused may, but need not, be suspended during inquiry.

Sec. 115.030 APPEAL

- A. If a member is not satisfied with intradepartmental review as outlined in Sections 115.010 - 020, he may request Inter-departmental Review as provided in State Personnel Rules, Section 12 01.14 through 12 01.17, wherein he is allowed legal counsel.

Sec. 115.040 EXEMPTIONS

- A. No temporary, provisional or probationary member shall have the right to review, hearing or appeal concerning dismissal, unless same is due to racial, religious or political reasons.

CHAPTER 115

REVIEW, HEARINGS AND APPEALS

Sec. 115.010 PROCEDURES (Re: Rule 12 01.0, State Personnel Rules)

- A. Any member in the classified service may seek intra-departmental review of any grievance as follows:
1. The member shall present his grievance in writing to, and discuss it with, his immediate supervisor.
 2. If not satisfied, he may proceed to the next supervisor.
 3. If still not settled to member's satisfaction, he may, within 10 days, submit grievance in writing and through chain of command, to the Commissioner. The Commissioner shall, within 15 days after receipt of the written grievance, provide the member with his written decision concerning the matter. (In order to arrive at his decision, the Commissioner may, but need not, ask for an Administrative Inquiry.) (Re: Section 115.020)

Sec. 115.020 ADMINISTRATIVE INQUIRY

- A. Inquiry members shall consist of the Commissioner or his designee and other personnel designated by him, provided at least one (1) member is of equal rank with the member charged.
- B. The Commissioner may, but need not, request the presence of the accused in writing. Oral notice to attend given by any superior is sufficient.
- C. An accused member ordered to appear shall do so or be cited for additional disciplinary action or such other action directed by the Commissioner.
- D. An accused does not have the right of legal counsel at an inquiry; however, he may remain silent.
- E. The substance of testimony shall be recorded and reported on Department forms as prescribed in Chapter 113, Section 020, as will the finding and recommendations of the members conducting the inquiry. Such reports shall be forwarded to the Commissioner.
- F. The Commissioner shall notify the accused as

legal?

Revised

prescribed in Sec. 115.010, paragraph 3.

- G. The accused may, but need not, be suspended during inquiry.

Sec. 115.030 APPEAL

- A. If a member is not satisfied with intra-departmental review as outlined in Sections 115.010 - 020, he may request Inter-departmental Review as provided in State Personnel Rules, Section 12 01.14 through 12 01.17, wherein he is allowed legal counsel.

Sec. 115.040 EXEMPTIONS

- A. No temporary, provisional or probationary member shall have the right of review, hearing or appeal concerning dismissal, unless same is due to racial, religious or political reasons.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

Judiciary Committee Report

on

DEPT. OF PUBLIC SAFETY ADMINISTRATIVE INQUIRIES

The disciplinary procedures of the Department of Public Safety have recently come to the attention of the Judiciary Committee. Of particular concern to the committee is Sec. 115.020D of the department's "Regulations and Operations Manual", relating to "Administrative Inquiries", which provides that "An accused does not have the right of legal counsel at an inquiry; however, he may remain silent." Testimony before the committee stated that in at least one instance a trooper subject to disciplinary action was advised that at his administrative inquiry he could have legal counsel, but when he appeared at the inquiry without legal counsel he was not allowed to speak in his own defense or to cross-examine opposing witnesses. As a result of the inquiry he was dismissed from service in the department.

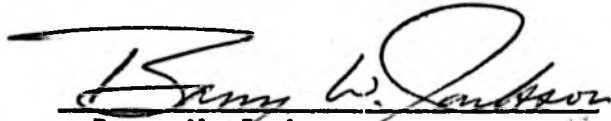
The committee is not concerned with the merits of the personnel action, which has been appealed under the personnel rules.

The committee believes that, although this administrative inquiry is not required by statute or the constitution since a hearing under the state personnel rules is available, when the inquiry is held, due process requires that the accused be allowed to have legal counsel and that whether or not the accused has legal counsel present he be allowed to testify on his own behalf, cross-examine witnesses and present evidence. The committee believes that Sec. 115.020D may be invalid despite the right to a subsequent "due process" hearing before the personnel board and in any event is very bad state policy and that the department's procedure in the case considered by the committee was improper in not allowing the accused trooper to defend himself and to cross-examine witnesses. The committee also believes that it was improper for the administrative inquiry to be filmed (video-taped) for use as an instructional aid at the training school for state troopers. (There was testimony that the film would be used for this purpose, and the committee has been told that the film has come from Sitka, the site of the training school, in response to the committee's request to see it.)

By way of comparison, the committee notes that Art. 135 of the Uniform Code of Military Justice (10 U.S.C., sec. 935) provides that in court-of-inquiry proceedings a person who is designated a "party" to the proceedings shall be given due notice of the inquiry and he has a right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence. In addition, sec. 0304(d) of the Coast Guard Supplement to the Manual for Courts Martial, United States, provides that for all three levels of investigation (informal, formal, and courts of inquiry) in that branch of the armed forces a party to an inquiry or investigation has the following rights: (1) to be given due notice of his designation as a "party"; (2) to be present during proceedings; (3) to be represented by counsel; (4) to challenge members of a court of inquiry but only for cause stated to the court (this obviously applies only to the third type of investigation); (5) to cross-examine witnesses; (6) to introduce evidence; (7) to testify as a witness, but he must first be advised of his rights under Art. 31 of the

U.C.M.J. (Miranda warnings, etc.); (8) to make a voluntary statement; (9) to make concluding argument. These investigations and inquiries are not "courts martial" nor are they non-judicial disciplinary proceedings under Art. 15 of the U.C.M.J. (10 U.S.C., sec. 815); they are investigatory proceedings apart from judicial or other final action, and they thus appear to be analogous to the Department of Public Safety's "administrative inquiries".

The Judiciary Committee requests that the Department of Public Safety, with the assistance and advice of the Department of Law, review its regulations pertaining to disciplinary matters and administrative inquiries, compare them with relevant provisions in the Uniform Code of Military Justice and the Coast Guard Supplement to the Manual for Courts Martial, and revise the regulations in order to assure due process of law and basic procedural fairness.



Barry W. Jackson
Barry W. Jackson
Chairman
House Judiciary Committee

CHAPTER 101

PROFESSIONAL CONDUCT

Sec. 101.010

BASIC OBJECTIVES

- A. To cause all members to constantly strive to increase the respect and honor of the profession in the public mind, and to strengthen public confidence in law enforcement.
- B. To encourage members to fully appreciate and value the responsibilities of their office.
- C. To regard the work of the Department as an honorable profession and to consider in it an opportunity to render a valuable service to society.
- D. To continually develop and maintain complete support and cooperation of the public.
- E. To increase and advance the effectiveness of the service by encouraging complete cooperation of all members for their mutual benefit.
- F. To develop complete coordination of effort in all official relationships with other governmental agencies.

Sec. 101.020

GENERAL RULES OF OFFICIAL CONDUCT

All members of the Department shall:

- A. Be habitually courteous; they shall dutifully accept their responsibilities as public servants and shall be attentive to citizens seeking assistance or information or who desire to register complaints or give evidence.
- B. Regard punctuality in all their engagements and the diligent performance of their duties as a prime responsibility to the public.
- C. At all times be cognizant of their primary obligation to render impartial, efficient, and effective services to the public in the discharge of their duties and to always regard their office as a public trust.

- D. Administer their duties in a courteous, fair, just, impartial and reasonable manner, according no one more reasonable treatment than others. They shall recognize the limitations of their authority and at no time use the power or influence of their office or position for their own personal advantage.
- E. Accept the responsibility for the proper care of state property and recognize the fact that any misuse or waste of such property is equally as reprehensible as the misuse of funds from the state treasury.
- F. Cooperate with all Federal, State, City and local officials to further insure the safety and general welfare of the public. They shall not permit personal differences or jealousies to influence their cooperation with other agencies.
- G. Add to their further development and effectiveness by adequate study and dedicated attention to self improvement, always keeping in mind that the professional must keep fit not only in body, but particularly in character, education and ideals of service.

They shall welcome the opportunity to make available to everyone any and all useful information concerning matters of public safety and welfare.
- H. Conduct their public and private life in such a manner that the public will regard them as examples of fidelity, stability and morality.
- I. Bear faithful allegiance to their government, and be loyal to their profession. They shall accept as a sacred obligation their responsibilities as citizens to support the Constitution of the United States, and as public officials they shall consider the privilege of defending the principles of liberty as defined in our Constitution and Laws the greatest honor that may be bestowed upon any man.

Sec. 101.030

ORIGIN OF CODES

It is the philosophy of the Department that the reputation that this governmental organization bears with the public is influenced,

to a very great degree, by the reaction of the public to the impact of the personalities of its members. Personalities that are characterized by such traits as loyalty, determination, alertness, intelligence, unselfishness, honesty and moral ascendancy are instantly appealing and respected. Each and every member is expected to make a dedicated effort to so conduct both his official and private life that he will inspire the confidence and trust of the public.

The Department considers law enforcement as an honored profession and recognizes the value and importance of developing and maintaining public confidence in the many and various endeavors and has accordingly enacted exacting rules of official conduct for all members.

To further emphasize the ideals and professional conduct which the Department has always sought to uphold, the Code and Canons of Ethics of the International Association of Chiefs of Police are adopted for the benefit of all Department of Public Safety members and especially for the guidance of all commissioned personnel.

Throughout the history of this Department, other reliable and necessary rules for conduct and performance of duty have been developed and are herein promulgated in their latest form.

Sec. 101.040

APPLICATION OF CODES AND RULES

All of the ethical standards and rules expressed herein are inclusive and together constitute the standards of conduct by which all members of the Department of Public Safety are to be governed. It shall be the duty of each member to study and become familiar with the rules and regulations governing the organization and operation of the Department, as well as the rules governing control and discipline.

CANONS OF POLICE ETHICS

Article 1. Primary Responsibility of Job

The primary responsibility of the police service, and of the individual officer, is the protection of the people of the United States through the upholding of their laws, chief among these is the Constitution of the United States and its amendments. The law enforcement officer always represents the whole of the community and its legally expressed will and is never the arm of any political party or clique.

Article 2. Limitations of Authority

The first duty of a law enforcement officer, as upholder of the law, is to know its bounds upon him in enforcing it. Because he represents the legal will of the community, be it local, state or federal, he must be aware of the limitations and prescriptions which the people, through law have placed upon him. He must recognize the genius of the American system of government which gives to no man, groups of men, or institution, absolute power, and he must insure that he, as a prime defender of that system, does not pervert its character.

Article 3. Duty to be Familiar with the Law and with Responsibilities of Self and other Public Officials

The law enforcement officer shall assiduously apply himself to the study of the principles of the laws which he is sworn to uphold. He will make certain of his responsibilities in the particulars of their enforcement, seeking aid from his superiors in matters of technicality or principle when these are not clear to him; he will make special effort to fully understand his relationship to other public officials, including other law enforcement agencies, particularly on matters of jurisdiction, both geographically and substantively.

Article 4. Utilization of Proper Means to Gain Proper Ends

The law enforcement officer shall be mindful of his responsibility to pay strict heed to the selection of means in discharging the duties of his office. Violations of law or disregard for public safety and property on the part of an officer are intrinsically wrong; they are self-defeating in that they instill in the public mind a like disposition. The employment of illegal means, no matter how worthy the end, is certain to encourage disrespect for the law and its officers. If the law is to be honored, it must first be honored by those who enforce it.

Article 5. Cooperation with Public Officials in the Discharge of Their Authorized Duties

The law enforcement officer shall cooperate fully with other public officials in the discharge of authorized duties, regardless of party affiliation or personal prejudice. He shall be meticulous, however, in assuring himself of the propriety, under the law, of such actions and shall guard against the use of his office or person, whether knowingly or unknowingly, in any improper or illegal action. In any situation open to question, he shall seek authority from his superior officer, giving him a full report of the proposed service or action.

Article 6. Private Conduct

The law enforcement officer shall be mindful of his special identification by the public as an upholder of the law. Laxity of conduct or manner in private life, expressing either disrespect for the law or seeking to gain special privilege, cannot but reflect upon the police officer and the police service. The community and the service require that the law enforcement officer lead the life of a decent and honorable man. Following the career of a policeman gives no man special prerequisites. It does give the satisfaction and pride of following and furthering an unbroken tradition of safeguarding the American republic. The officer who reflects upon this tradition will not degrade it. Rather, he will so conduct his private life that the public will regard him as an example of stability, fidelity and morality.

Article 7. Conduct toward the Public

The law enforcement officer, mindful of his responsibility to the whole community, shall deal with individuals of the community in a manner calculated to instill respect for its laws and its police service. The law enforcement officer shall conduct his official life in a manner such as will inspire confidence and trust. Thus, he will be neither overbearing nor subservient, as no individual citizen has an obligation to stand in awe of him nor a right to command him. The officer will give service where he can, and require compliance with the law. He will do neither from personal preference or prejudice, but rather as a duly appointed officer of the law discharging his sworn obligation.

Article 8. Conduct in Arresting and Dealing with Law Violators

The law enforcement officer shall use his powers of arrest strictly in accordance with the law and with due regard to the rights of the citizen concerned. His office gives him no right to prosecute the violator nor to mete out punishment for the offense. He shall, at all times, have a clear appreciation of his responsibilities and limitations regarding detention of the violator; he shall conduct himself in such a manner as will minimize the possibility of having to use force. To this end he shall cultivate a dedication to the service of the people and the equitable upholding of their laws whether in the handling of law violators or in dealing with the law-abiding.

Article 9. Gifts and Favors

The law enforcement officer, representing government, bears the heavy responsibility of maintaining, in his own conduct, the honor and integrity of all government institutions. He shall, therefore, guard against placing himself in a position in which any person can expect special consideration or in which the public can reasonably assume that special consideration is being given. Thus, he should be firm in refusing gifts, favors, or gratuities, large or small, which can, in the public mind, be interpreted as capable of influencing his judgment in the discharge of his duties.

Article 10. Presentation of Evidence

The law enforcement officer shall be concerned equally in the prosecution of the wrong-doer and the defense of the innocent. He shall ascertain what constitutes evidence and shall present such evidence impartially and without malice. In so doing, he will ignore social, political, and all other distinctions among the persons involved, strengthening the tradition of the reliability and integrity of an officer's word.

The law enforcement officer shall take special pains to increase his perception and skill of observation, mindful that in many situations his is the sole impartial testimony to the facts of the case.

Article 11. Attitude Toward Profession

The law enforcement officer shall regard the discharge of his duties as a public trust and recognize his responsibility as a public servant. By diligent study and sincere attention to self-improvement he shall strive to make the best possible application of science to the solution of crime and, in the field of human relationships, strive for effective leadership and public influence in matters affecting public safety. He shall appreciate the importance and responsibility of his office, and hold police work to be an honorable profession rendering valuable service to his community and his country.

CHAPTER 115

REVIEW, HEARINGS AND APPEALS

Sec. 115.010 PROCEDURES (Re: Rule 12 01.0, State Personnel Rules)

- A. Any member in the classified service may seek intra-departmental review of any grievance as follows:
1. The member shall present his grievance in writing to, and discuss it with, his immediate supervisor.
 2. If not satisfied, he may proceed to the next supervisor.
 3. If still not settled to member's satisfaction, he may, within 10 days, submit grievance in writing and through chain of command, to the Commissioner. The Commissioner shall, within 15 days after receipt of the written grievance, provide the member with his written decision concerning the matter. In order to arrive at his decision, the Commissioner may, but need not, ask for an Administrative Inquiry. (Re: Section 115.020)

Sec. 115.020 ADMINISTRATIVE INQUIRY

- A. Inquiry members shall consist of the Commissioner or his designee and other personnel designated by him, provided at least one (1) member is of equal rank with the member charged.
- B. The Commissioner may, but need not, request the presence of the accused in writing. Oral notice to attend given by any superior is sufficient.
- C. An accused member ordered to appear shall do so or be cited for additional disciplinary action or such other action directed by the Commissioner.
- D. An accused does not have the right of legal counsel at an inquiry; however, he may remain silent.
- E. The substance of testimony shall be recorded and reported on Department forms as prescribed in Chapter 113, Section 020, as will the finding and recommendations of the members conducting the inquiry. Such reports shall be forwarded to the Commissioner.
- F. The Commissioner shall notify the accused as

described in Sec. 115.010, paragraph 3.

- C. The accused may, but need not, be suspended during inquiry.

Sec. 115.030 APPEAL

- A. If a member is not satisfied with intra-departmental review as outlined in Sections 115.020-029, he may request Inter-departmental Review as provided in State Personnel Rules, Section 12 01.14 through 12 01.17, wherein he is allowed legal counsel.

Sec. 115.040 EXEMPTIONS

- A. No temporary, provisional or probationary member shall have the right of review, hearing or appeal concerning dismissal, unless same is due to racial, religious or political reasons.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

April 19, 1971

MEMORANDUM

TO: William J. Moran, Chairman
House Judiciary Committee

FROM: Arthur H. Peterson *Art*
Revisor of Statutes

SUBJECT: Department of Public Safety's "administrative inquiries"

You will find attached a copy of the Judiciary Committee's May 31, 1970 report on this subject, appearing in Supp. No. 19 of the 1970 House Journal. In the last paragraph, the committee requested the Department of Public Safety, with the assistance and advice of the Department of Law, to "review its regulations pertaining to disciplinary matters and administrative inquiries, compare them with relevant provisions in the Uniform Code of Military Justice and the Coast Guard Supplement to the Manual for Courts Martial, and revise the regulations in order to assure due process of law and basic procedural fairness." The review and revision may have been completed, but I am not aware of it, nor do I know of a report on the matter by either the Department of Public Safety or the Department of Law in response to the committee's request.

Att.

AHF:ic

5/31/70

HOUSE JOURNAL

Judiciary Committee Report

on

DEPT. OF PUBLIC SAFETY ADMINISTRATIVE INQUIRIES

The disciplinary procedures of the Department of Public Safety have recently come to the attention of the Judiciary Committee. Of particular concern to the committee is Sec. 115.020D of the department's "Regulations and Operations Manual", relating to "Administrative Inquiries", which provides that "An accused does not have the right of legal counsel at an inquiry; however, he may remain silent." Testimony before the committee stated that in at least one instance a trooper subject to disciplinary action was advised that at his administrative inquiry he could have legal counsel, but when he appeared at the inquiry without legal counsel he was not allowed to speak in his own defense or to cross-examine opposing witnesses. As a result of the inquiry he was dismissed from service in the department.

The committee is not concerned with the merits of the personnel action, which has been appealed under the personnel rules.

The committee believes that, although this administrative inquiry is not required by statute or the constitution since a hearing under the state personnel rules is available, when the inquiry is held, due process requires that the accused be allowed to have legal counsel and that whether or not the accused has legal counsel present he be allowed to testify on his own behalf, cross-examine witnesses and present evidence. The committee believes that Sec. 115.020D may be invalid despite the right to a subsequent "due process" hearing before the personnel board and in any event is very bad state policy and that the department's procedure in the case considered by the committee was improper in not allowing the accused trooper to defend himself and to cross-examine witnesses. The committee also believes that it was improper for the administrative inquiry to be filmed (video-taped) for use as an instructional aid at the training school for state troopers. (There was testimony that the film would be used for this purpose, and the committee has been told that the film has come from Sitka, the site of the training school, in response to the committee's request to see it.)

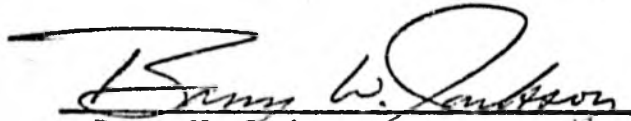
By way of comparison, the committee notes that Art. 135 of the Uniform Code of Military Justice (10 U.S.C., sec. 935) provides that in court-of-inquiry proceedings a person who is designated a "party" to the proceedings shall be given due notice of the inquiry and he has a right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence. In addition, sec. 0304(d) of the Coast Guard Supplement to the Manual for Courts Martial, United States, provides that for all three levels of investigation (informal, formal, and courts of inquiry) in that branch of the armed forces a party to an inquiry or investigation has the following rights: (1) to be given due notice of his designation as a "party"; (2) to be present during proceedings; (3) to be represented by counsel; (4) to challenge members of a court of inquiry but only for cause stated to the court (this obviously applies only to the third type of investigation); (5) to cross-examine witnesses; (6) to introduce evidence; (7) to testify as a witness, but he must first be advised of his rights under Art. 31 of the

HOUSE JOURNAL

- 2 -

U.C.M.J. (Miranda warnings, etc.); (8) to make a voluntary statement; (9) to make concluding argument. These investigations and inquiries are not "courts martial" nor are they non-judicial disciplinary proceedings under Art. 15 of the U.C.M.J. (10 U.S.C., sec. 815); they are investigatory proceedings apart from judicial or other final action, and they thus appear to be analogous to the Department of Public Safety's "administrative inquiries".

The Judiciary Committee requests that the Department of Public Safety, with the assistance and advice of the Department of Law, review its regulations pertaining to disciplinary matters and administrative inquiries, compare them with relevant provisions in the Uniform Code of Military Justice and the Coast Guard Supplement to the Manual for Courts Martial, and revise the regulations in order to assure due process of law and basic procedural fairness.



Barry W. Jackson
Chairman
House Judiciary Committee

April 22, 1971

The Honorable John E. Havelock
Attorney General
Pouch K
Juneau, Alaska 99801

Dear Mr. Havelock:

You will find attached a copy of the Judiciary Committee's May 31, 1970 report on the Department of Public Safety's "administrative inquiries," appearing in Supp. No. 19 of the 1970 House Journal. In the last paragraph, the committee requested the Department of Public Safety, with the assistance and advice of the Department of Law, to "review its regulations pertaining to disciplinary matters and administrative inquiries, compare them with relevant provisions in the Uniform Code of Military Justice and the Coast Guard Supplement to the Manual for Courts Martial, and revise the regulations in order to assure due process of law and basic procedural fairness." The review and revision may have been completed, but I am not aware of it, nor do I know of a report on the matter by either the Department of Public Safety or the Department of Law in response to the committee's request.

We appreciate hearing from you on this matter. Thank you.

Sincerely,

William J. Moran
Chairman
House Judiciary

WJM/lb

April 21, 1971

The Honorable Emery W. Chapple, Jr.
Commissioner, Dept. of Public Safety
Pouch N
Juneau, Alaska 99801

Dear Mr. Chapple:

You will find attached a copy of the Judiciary Committee's May 31, 1970 report on the Department's "administrative inquiries," appearing in Supp. No. 19 of the 1970 House Journal. In the last paragraph, the committee requested the Department of Public Safety, with the assistance and advice of the Department of Law, to "review its regulations pertaining to disciplinary matters and administrative inquiries, compare them with relevant provisions in the Uniform Code of Military Justice and the Coast Guard Supplement to the Manual for Courts Martial, and revise the regulations in order to assure due process of law and basic procedural fairness." The review and revisions may have been completed, but I am not aware of it, nor do I know of a report on the matter by either the Department of Public Safety or the Department of Law in response to the committee's request.

We appreciate hearing from you on this matter. Thank you.

Sincerely,

William J. Moran
Judiciary Chairman

WJM:jc

Encl.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

H/B 174

Statement by the AFL-CIO Executive Council
on

HB 174

The Uniform Consumer Credit Code

Bal Harbour, Florida
February 17, 1969

We have carefully examined the Uniform Consumer Credit Code, a "model state law" which has been prepared for introduction in the 47 state legislatures meeting in 1969.

UCCC would repeal and replace virtually all existing state laws relating to consumer credit. Sponsored by the National Conference of Commissioners on Uniform State Laws, it is offered for adoption as a "package," without amendment. The sponsors urge immediate enactment, despite the fact that the Code is a lengthy, complex, and sweeping legislative proposal. The public has had little opportunity to evaluate either its general impact or its specific provisions.

The Code is not essentially a "consumer statute" but seeks to compromise consumer and creditor interests. While it would make a number of desirable reforms in behalf of the consumer, which should be supported, it also contains serious drawbacks from a consumer point of view.

For this reason we cannot endorse the Code in its present form for enactment as a uniform law throughout the United States.

Our principal objections are as follows:

(1) We are shocked by the extraordinarily high finance charge ceilings authorized by the Code, ranging from 18 to 36 percent per year for installment loans and credit, and believe that they would inevitably result in exorbitantly high credit costs for borrowers and credit buyers.

(2) We cannot concur in the excessive rate of 10 percent per year, which would be permitted on first mortgages.

(3) We are dissatisfied with the provisions on wage garnishment which could, if care is not taken, result in reduction of existing protections for wage earners in a number of states. We cannot in any case endorse a "take" by creditors as high as 25 percent of a person's wages.

(4) We are alarmed at the general repeal contemplated by the Code of present state consumer credit legislation regardless of whether it is superior to Code provisions or covers subjects not covered in the Code.

The possible impact of Code enactment would vary in each of the 50 states. Each state will need to make a careful assessment of its existing legislation in comparison with Code provisions.

In states with a large body of existing legislation, state AFL-CIO central bodies will probably find it best to reject the Code and instead seek improvements in their present laws, borrowing good features from the Code where appropriate.

In states with little or very deficient legislation, state central bodies may find it advisable to start with the Code as a working basis, but should seek amendment of its worst features.

In any case, precipitous enactment of the Code on an "as is" package basis should be rejected, as well as deviant forms, containing even worse features, which are likely to be introduced in some of the legislatures.

At the national level, the AFL-CIO staff will render whatever assistance it can to state bodies in connection with UCCC. We will also pursue abatement of consumer credit evils through federal legislation, wherever it is possible and appropriate. The door should not be shut on consumer credit reform through federal action. Enactment of federal minimum standards in the consumer credit field may in fact be necessary to reach the states in which reform is most needed and where creditor lobbies are most likely to succeed in blocking it.

BACKGROUND STATEMENT
ON
UNIFORM CONSUMER CREDIT CODE

The Uniform Consumer Credit Code (UCCC) is a type of "model state law" developed by the National Conference of Commissioners on Uniform State Laws. It was officially promulgated by the Conference on July 30, 1968, and subsequently endorsed, on August 7, 1968, by the American Bar Association. The Code has been in process since 1964, although much of the final text was prepared in 1968 to take account of the Federal Consumer Credit Protection Act, which was signed by the President on May 29, 1968.

Since the original text was released, the Code has undergone additional revisions. The current version of the Code is the "Revised Final Draft, November 1968," published in December 1968.

UCCC is designed as a replacement for virtually all existing state laws relating to consumer credit. Present laws on such provisions as maximum finance charge rates, (including usury rates), disclosure, licensing, administration and enforcement would be repealed. The one major exception to general repeal would be in the case of "supervised financial institutions" -- such as banks, savings and loan associations, and credit unions -- which receive deposits as well as make loans, although the new rate structure would apply to them as well as to other creditors.

Because the Code is designed as a uniform law, to be enacted in the same form in every state, it is offered as a "package" for adoption in its entirety, without amendment. Code sponsors are seeking blanket endorsement of the Code, regardless of any deficiencies and drawbacks.

The Code was not developed as a "consumer statute," as such, but rather seeks a "balance" of consumer and creditor interests. The principal "trade-off" appears to be in the form of high finance charges for creditors in exchange for restrictions on some of the more bloodthirsty techniques by which creditors can enforce repayment of debts plus more comprehensive enforcement procedures than now apply under many types of credit statutes.

Present indications are that the compromise is unlikely to be satisfactory to all groups. The Code has drawn support from various segments of the credit industry, but coldness from others (notably the American Bankers Association). No known support has come from consumer groups. The major exception in the consumer community was an endorsement by the Special Assistant to the President for Consumer Affairs and the President's Committee on Consumer Interests. But the Code has come under heavy fire from the Consumer Federation of America, representing 136 consumer-oriented organizations. To date it has been opposed by at least three important state consumer organizations -- the Association of California Consumers, the Consumers League of New Jersey, and the Pennsylvania League for Consumer Protection -- as well as by the Massachusetts Consumers' Council, an official consumer representation body.

Although Code sponsors have sought immediate, wholesale endorsements of their work, and immediate enactment in the 47 state legislatures meeting in 1969, the general public has had little time to gain an understanding of the

Code or to develop knowledgeable criticism. The possible impacts would, of course, vary in each of the separate 50 states. Study and criticism will be a continuing process, and common sense dictates a rejection of precipitous enactment.

For states which already have a large body of consumer credit legislation, covering both cash loans and retail sales credit, enactment of UCCC may represent little if any gain in consumer protections and in fact is more likely to result in a net loss. Such states should be extremely critical of UCCC and probably will find it best to reject the Code altogether in favor of continuing improvements in their existing statutes.

On the other hand, states with little or very deficient consumer credit legislation could find that UCCC represents a net gain, in the sense that almost anything would be better than what they have. Even in such situations, a cautious approach is advisable. As indicated in the more detailed comments that follow, finance charge ceilings authorized under UCCC are extraordinarily high for types of credit other than for small loans, and the Code has other drawbacks.

Clearly, an important motivation for urging speedy enactment is the hope of forestalling further federal action in the field of consumer credit. An immediate and announced goal of the Conference is to gain exemptions of state credit laws from applicable provisions of the newly enacted federal Consumer Credit Protection Act. Under the federal law, state laws with "substantially similar" provisions may be exempted from federal requirements for disclosure of the cost of consumer credit and from federal requirements limiting the amount of wages that may be garnished. Further possibilities of federal entry into the consumer credit field could come out of the prospective study by the newly authorized National Commission on Consumer Finance which was set up by the Consumer Credit Protection Act with instructions to make a study and recommendations by January 1, 1971. Also specific federal bills may be expected in the field of credit insurance and in door-to-door credit sales, at a minimum.

MAJOR POINTS ABOUT THE UNIFORM CONSUMER CREDIT CODE

Maximum Charges

1. The Code repeals all existing laws setting maximum rates on consumer loans from banks, credit unions, small loan companies and repeals general usury rate statutes (important primarily in mortgage lending). Maximum rates for retail sales are also repealed including finance charge ceilings set for automobiles, for general retail sales, home repair services and for revolving credit. Existing finance charge ceilings for most creditors would be replaced by uniform ceilings patterned on existing rates for small loan companies, the highest-rate legal lenders in the credit market. In effect, the small loan company rates would become an "umbrella" for all creditors, both for cash loans and for sales credit. The new ceilings would thus raise the legally permitted rates of charge for most creditors in most states.

For most types of consumer credit, except first mortgages, the effective ceilings would be 36% on the first \$300, 21% on the next \$700 and 15% on the remainder over \$1,000. Ceilings on store revolving credit are set at 24% on the first \$500 and 18 percent on the remainder. (See Attachment I for more detailed outline.)

2. Over and above the maximum rate ceilings, the Code permits additional charges for official fees and taxes, and for insurance -- property, liability, credit life, and credit accident and disability. These provisions follow the lines of the Federal Consumer Credit Protection Act, which defines "finance charge" in such a way as to permit their exclusion from the finance charge for disclosure purposes. A number of current small loan laws require the lender to include most of these charges in the finance charge, although extra charges for credit life insurance are now generally permitted. The "additional charge" system provides an additional source of revenue to creditors, since the "extras" can be included in the amount of the loan or credit and a finance charge computed on top of them.
3. In addition to charges for official fees, taxes, and insurance, the Code allows "extras" for "other benefits." This provision, although presented as being in conformity with the federal act, actually opens up what could be a dangerous loophole for "tie-in" charges and purchases to be required by the creditor as a condition of extending credit. The Code nowhere makes a flat prohibition of "tie-in" sales, except for limitations on compulsory purchase of various types of insurance.
4. The Code properly requires that a rebate of finance charges be made to the credit buyer or borrower who pays off the credit balance in advance. The rebate is calculated according to the "Rule of 78". Unfortunately, where graduated rate ceilings are used, as under the Uniform Consumer Credit Code, the Rule of 78 provides the creditor with a windfall of unearned credit charges and a corresponding shortfall to the consumer. The "Revised Final Draft" attempts to deal with the problem, not by eliminating the windfall, but by authorizing alternative calculation of the finance charges in such a way as to "legitimize" the windfall. This point will require more analysis and explanation, but some idea of the problem can be obtained by the summary comparisons shown in Attachment II, based on tables appearing in the explanatory text ("Official Comment") of the Code.

Insurance

UCCC insurance provisions are written within the framework of the Model Credit Insurance Act developed by the National Association of Insurance Commissioners and now in effect in a number of states. Although some of the more disreputable creditor practices in the sale of credit insurance are prohibited, UCCC does nothing to deal with fundamental problems of overcharges for credit, life, accident and health policies documented by the Senate Antitrust and Monopoly Subcommittee in its 1967 investigative hearings. These hearings disclosed widespread profiteering by creditors on the sale of high-priced insurance, paid for in its entirety by borrowers.

Kickbacks, commissions, and rebates from insurance companies and creditor-owned insurance subsidiaries have built a system of "reverse competition" encouraging the sale of insurance at highest possible rates. UCCC forbids charges beyond the legal maximums permitted by the Commissioner of Insurance but does nothing to reduce them further. Lenders' profits on insurance are specifically protected.

Disclosure Provisions

The sections on disclosure are largely a duplicate of the provisions of the Federal law which contains extensive requirements relating to items of cost of the credit provided, including a statement of the annual percentage rate. Both credit contracts and credit advertising are covered. The principal problem about the disclosure provisions is that since all existing state legislation on disclosure is repealed, any disclosure requirements other than the ones copied from the federal law would disappear. Disclosure statutes may, for example, require disclosure of a buyer's rights under the law, make detailed specifications as to contract forms, or other matters. In effect the federal specifications would substitute for existing requirements rather than add to them. In addition, the disclosure provisions could be rendered ineffective by the fact that specific administrative authority for issuing regulations to interpret the disclosure requirements in the Code is not provided. In particular, the decision as to what is "conspicuous" is left to the courts for determination, on a case by case basis.

Restrictions on Contract Provisions

1. Credit Sales

The UCCC makes a commendable attempt to prohibit or restrain certain types of contracts and contract provisions which are notoriously unfair to credit buyers, but it does not go "all the way."

a. Holder in Due Course

The Code knocks a hole in the onerous "holder-in-due course" doctrine under which a finance company which has bought a credit contract from a retailer is held free of all responsibility to the original buyer and is legally entitled to collect monthly payments from the debtor, regardless of fraud in the original contract, overcharges, defects in the product or other failure in the seller's duties.

The Code would prohibit sellers from taking a "negotiable instrument" in connection with consumer credit contracts. A subsequent buyer of the paper (the "holder") would not qualify for "holder in due course" status if he had notice of the seller's violation. However, no provision is made for labeling consumer paper as such and no penalties attach to the "holder" even he does take paper illegally procured by the seller.

The Code also invalidates agreements whereby the borrower waives his legal defenses against a subsequent holder ("assignee") of a credit contract. Two Alternatives are provided. Alternative A, which subjects assignees to buyer's defenses, is definitely superior to Alternative B, which requires notice by buyer to assignee of defenses within three months. Even under Alternative A, certain limitations are placed on the liability of the assignee.

b. Balloon Contracts

The Code discourages the writing of "balloon contracts," but does not prohibit them. It merely specifies that the buyer shall have the right to refinance a balloon payment "without penalty" in any case where the balloon is more than twice the average of earlier scheduled payments. Current state laws that deal with balloon payments usually prohibit them.

c. Security for Contract

The Code makes certain restrictions on the security that may be taken in a credit sale. In general the seller may not take a security interest in property of the debtor other than in the goods which are the subject of sale. Exceptions are allowed to permit a security interest in goods on which services are performed or in which goods sold are installed. Also a security interest in land may be taken if goods are affixed to it or improvement services performed on it. The debt must be at least \$300 in the case of security interest in goods and at least \$1,000 in the case of a security interest in land. These provisions are definitely a step in the right direction, but the \$300 and \$1,000 limits have been criticized as too low.

d. Add-on Sales

The Code reforms but does not eliminate "add-on" sales whereby a buyer's current purchases are permitted to be taken as security for earlier purchases on which payments have not yet been completed, and vice-versa (earlier purchases become security for later purchases). Situations have occurred in which default on the most recent purchase have occasioned loss to the buyer of the entire set of purchases. The Code provides that a buyer's payments must be allocated to the goods in the order which they were bought and the security interest terminated in each item as the debt on each is paid off.

A question remains as to whether "add-on" sales should be prohibited in their entirety. A consideration against such prohibition in the Code as presently written is that multiple separate sales could result in multiple high-charge contracts under the graduated rate structure.

e. Wage Assignments

UCCC prohibits wage assignments, as do a number of existing state laws. This is a desirable reform. A wage assignment is an agreement which provides that the creditor can take part of a worker's wages directly from his employer if the debt is not repaid when due. Under UCCC an assignment of earnings may not be taken unless the employee is free to revoke his authorization of the assignment.

f. Referral Sales

Referral sales are prohibited. A desirable reform. Referral selling is a racket whereby the buyer is persuaded to sign a contract by a promise that he can recoup the purchase price in whole or in part by supplying other customers to the seller.

g. Attorney's Fees

Two alternatives are provided: (A) prohibits agreements providing for payment of attorney's fees by the borrower and (B) limits attorney's fees to 15 percent of the unpaid balance. Alternative (A) is clearly superior, particularly since "reasonable expenses" are allowed to the creditor in realizing on his security interest in case of the borrower's default.

h. Confession of Judgment

This is prohibited. A desirable and important reform. A debtor who "confesses judgment" signs away his legal rights to challenge the validity of the debt.

i. Blank Spaces and Contract Accelerations

Two notable omissions in the Code are (1) the failure to prohibit blank spaces in contracts (a common requirement under existing state legislation) a source of easy fraud on the debtor (2) the failure to curb the creditor's unrestricted right to require immediate payment of the unpaid balance of the debt thereby precipitating a debtor's default. Unilateral acceleration by the creditor should be restricted to cases in which substantial default has actually occurred.

2. Loans

Restrictions on loan agreements are less extensive than those for sales. Provisions on balloon payments, wage assignments, attorney's fees, and confessions of judgment are the same. But no restraints are put upon the rights of holders in due course or on rights of assignees. "Supervised lenders" (licensed lenders and supervised financial institutions) may not

take a security interest in land unless the debt is over \$1,000 but other lenders may do so. Again, the \$1,000 cut-off has been criticized as too low.

Restrictions on Creditor Collection Practices

1. Deficiency Judgments

The UCCC makes a limited attack on deficiency judgments. It provides that a seller who repossesses or takes back goods that were the subject of sale (or other security for the debt) may not also obtain payment for the "deficiency" between what the goods sell for and the unpaid balance of the debt. However, this provision applies only where the cash price of the sale was \$1,000 or less, thus being of no effect for larger purchases such as new cars. No restraint on deficiency judgments applies in the case of cash lenders.

2. Wage Garnishment

UCCC would restrict garnishment along the lines of the Federal Consumer Credit Protection Act which limits garnishment to 25% of disposable earnings or the excess over \$48 per week (30 times the federal minimum hourly wage) whichever is less. In UCCC the minimum exemption is improved to \$64 (40 times the minimum wage) but the 25% figure remains unchanged.

In addition UCCC would prohibit garnishment before judgment and would prohibit employers from firing workers on account of garnishment. Federal law forbids firing on account of garnishment for "any one indebtedness" and makes no special provision for garnishment before judgment.

The principal immediate problem presented by UCCC is whether its 25% limit and basic exemption amount would replace more favorable provisions under a number of existing state laws, for example, laws which provide a 10% limit or which do not permit garnishment at all. A "savings clause" is included in the Federal statute for such situations, but not in the text of the Code.

In the most recent published edition of the Code (Revised Final Draft, November 1968) the "Official Comment" has been rewritten to disclaim any intent to undercut existing laws which provide additional protections to wage-earners. However, the fact remains that the statutory language does not in itself accomplish this result.

A further technical difficulty presented by the Code is that its garnishment provisions cover only situations in which the garnishment has arisen out of a transaction covered by the Code (generally, debt characterized either by installment repayments or by the imposition of a finance charge). Garnishment arising out of debt not covered by the Code, such as service credit (doctor bills and utility bills), would not be affected.

Even assuming the most favorable interpretations of the Code, only modest improvement is made over the Federal provisions which will go into effect July 1, 1970. More comprehensive action on garnishment is needed, either to abolish garnishment altogether, or to severely restrict its application.

Contract Cancellation Rights

UCCC includes a section on "home solicitation sales" giving buyers a three day period in which to cancel a credit contract for goods or services bought from a door-to-door salesman.

The objective of this provision is obviously desirable, but specific points will need to be examined for possible improvements. The provision for a 5% cancellation fee has been particularly criticized.

An additional section, relating to buyer's cancellation rights in the case of a credit sale or loan secured by the buyer's home, is incorporated from the Federal Consumer Credit Protection Act.

Administration and Enforcement

Administration and enforcement is centered in a single Administrator who is given fairly impressive powers in the form of authority to issue "cease and desist" orders, to obtain injunctions and temporary injunctions from the courts, to bring suit for civil penalties, and to recover overcharges in behalf of debtors. Debtors are also given certain rights of bringing private suits.

Licensing requirements are included for all "supervised lenders" and their assignees (i.e., lenders who charge more than 18 percent per year on loans). These provisions would cover lenders presently licensed under state small loan laws and could have the effect of requiring licensing of at least some high rate lenders in the second mortgage market. Licensing provisions are considerably less stringent than those usually applicable to small loan licensees under much existing legislation. No license would be required for lenders charging less than 18 percent per year.

No licensing is required in the credit sales field, either for retailers or for sales finance companies which buy their paper. They are subject only to registration requirements. A number of states currently have licensing requirements for sales finance companies, and in some states retail dealers (especially automobile dealers) must be licensed for credit operations. These laws would be repealed by UCCC. Licensing requirements involve important powers to suspend or revoke the license of an enterprise to continue in business and can provide an important protection against shady operators in the credit field, as well as in securing general compliance with the law.

Apparently the main weapon in the Code against shady operators in the credit sales field would be recourse by the Administrator to the courts for an injunction against "unconscionable" conduct.

Another notable omission is rule-making power for the Administrator. He is prohibited from issuing regulations except where specifically authorized by the Code to do so. (These relatively few authorizations are nowhere summed up in a list.) It is evidently intended that the Administrator may issue regulations to correspond to those which will be issued by the Federal Reserve Board, assuming the state were to be exempted from the operation of the federal statute with respect to disclosure requirements. However, rule-making powers in the section of the Code dealing with disclosure do not appear sufficient to accomplish this result.

February 7, 1969
AFL-CIO Department of Research/Draper

FINANCE CHARGE CEILINGS UNDER UNIFORM CONSUMER CREDIT CODE

1. For retail sellers

Installment credit: *

36% on first \$300

21% on next \$700

15% on excess over \$1,000

Revolving credit:

2% per month on first \$500 (24% per year)

1½% per month on excess over \$500 (18% per year)

2. For licensed lenders and supervised financial institutions

(small loan companies, finance companies, commercial and industrial loan banks, credit unions)

Loans and revolving loan accounts*

36% on first \$300

21% on next \$700

15% on excess over \$1,000

3. Other lenders

a. 18% per year

b. Mortgage loans are exempt from certain key provisions of the Code if finance charge is 10% or less. This is intended to result in an effective ceiling of 10% on first mortgages.

*Alternatively, a rate of 18% is authorized if the yield would be larger.

Note: The Code further provides for an escalation of effective ceilings in accordance with rises in the Consumer Price Index. This is done through increasing the sizes of the loan to which the higher rates apply. For example, if the CPI increased by 10%, the \$300 to which the 36% rate applies would go to \$330 and the 21% rate would apply up to \$1,100 instead of \$1,000.

CREDITOR'S EARNED INTEREST CHARGES ON LOAN
OF \$1500

Month No.	Normal Computation <u>1/</u>	Rule of 78 <u>2/</u>	Alternative Permitted in Revised Final Draft <u>3/</u>
1	\$ 27.50	\$ 32.66	\$ 31.38
2	26.06	29.85	29.05
3	24.60	27.14	26.67
4	23.13	24.43	24.25
5	21.63	21.72	21.77
6	19.67	18.99	19.24
7	17.52	16.28	16.66
8	15.33	13.57	14.03
9	13.10	10.86	11.34
10	10.83	8.15	8.59
11	8.19	5.42	5.79
12	<u>4.12</u>	<u>2.71</u>	<u>2.91</u>
Total	\$ 211.68	\$ 211.68	\$ 211.68

Rebate due if loan is paid off after 5 months (the addition of charges for months 6-12):

(1) Normal computation: \$ 88.76
 (2) Rule of 78: 75.98
 (3) Alternative under Revised Draft: 78.56

1/ Based on month by month application of 36% per year on first \$300, 21% on next \$700, and 15% on balance over \$1,000

2/ Based on distribution of total finance charge according to Rule of 78

3/ Based on recasting of charges at flat annual rate of 25.10 percent, corresponding to 36% on first \$300, 21% on next \$700, and 15% on balance over \$1,000

**A SUMMARY
OF THE
UNIFORM CONSUMER CREDIT CODE**

**PREPARED BY
NATHANIEL E. BUTLER
Educational Director**

**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 cost, 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 sub-standard 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 over-reaching 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.

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.

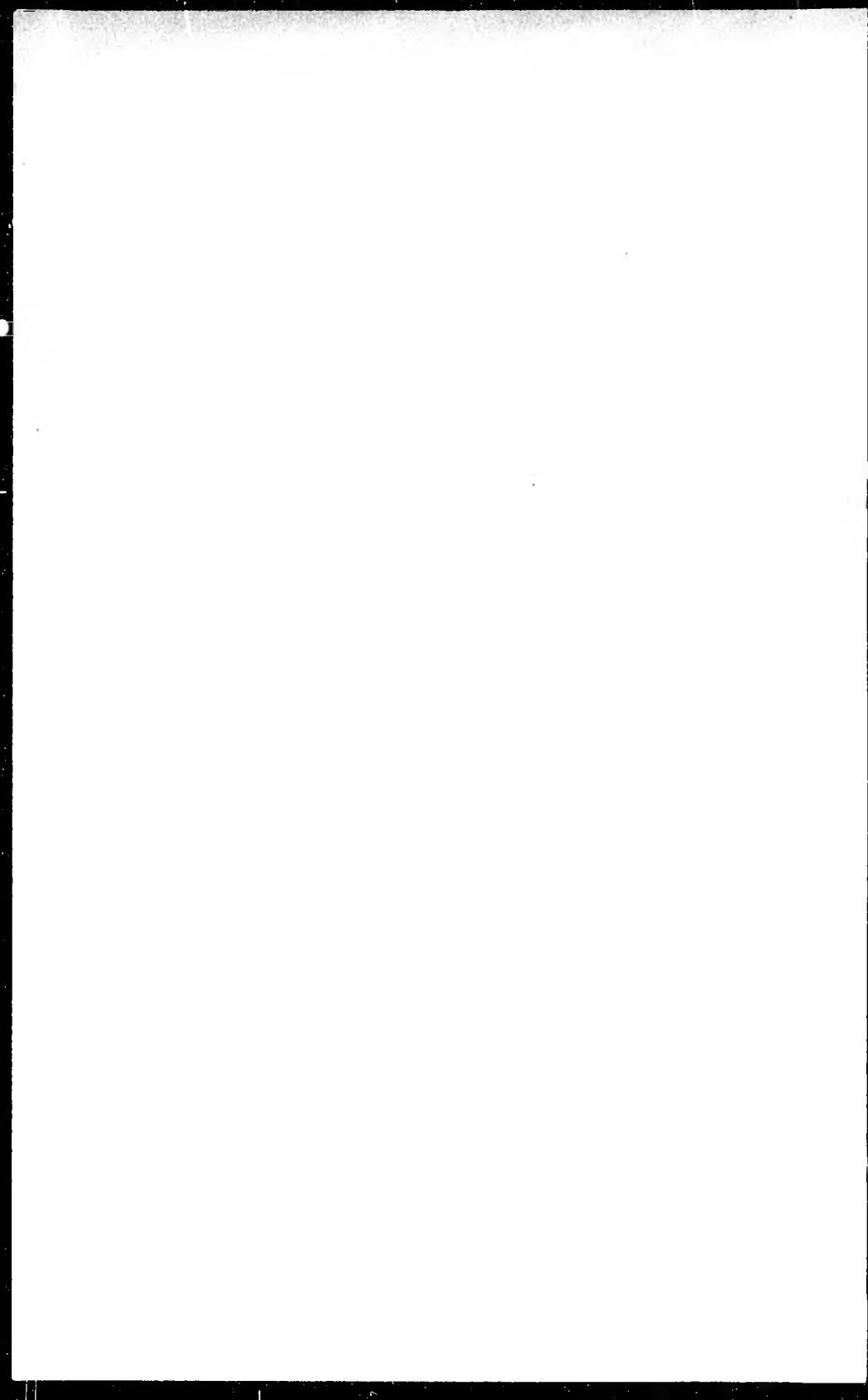
Among his other powers, the Administrator is authorized to seek an injunction against unconscionable agreements or conduct.

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.



Questions & Answers

On

**UNIFORM
CONSUMER
CREDIT CODE**

Courtesy of

Alaska Retail Association, Inc.

**Box 1727
Anchorage, Alaska**

THE UNIFORM CONSUMER CREDIT CODE

Questions and Answers

Q. What is the Uniform Consumer Credit Code?

A. The Uniform Consumer Credit Code is a balanced consumer protection law considered by most authorities to be the finest consumer protection legislation ever written.

Q. Who prepared the UCCC?

A. The Code was prepared by the National Conference of Commissioners on Uniform State Laws.

Q. What is the National conference?

A. The Conference is an organization made up of Commissioners of the 50 states whose function it is to draft uniform legislation to be offered to states for enactment.

Q. How many Commissioners are there in the National Conference?

A. The average number of Commissioners from each state is three making a total of 150 for the Conference as a whole. Provisions for appointment of Commissioners is made by statute with appointments customarily made by the Governor.

Q. What are the qualifications of Commissioners?

A. Commissioners must be either practicing lawyers, judges or law school professors.

Q. Are Commissioners paid for their services?

A. The Commissioners serve without compensation but are reimbursed for most out-of-pocket expenses.

Q. What other laws have been written by the National Conference?

A. The organization which has been in existence since 1892 has drafted several other uniform state laws. Examples of such laws which have been widely enacted include: The Uniform Sales Act, the Uniform Stock Transfer Act, more recently, the Uniform Commercial Code.

Q. What is the relationship of the Commissioners to their respective states?

A. Commissioners are officials of the respective states which they represent and, as such, are public servants with all of the responsibilities and duties incident to public service.

Q. Just how does the role of public servants influence the work of the Commissioners?

A. Commissioners accept their responsibility as public servants with the highest ethics. Every action of the National Conference is determined fully by the public responsibility felt by its members.

Q. How does the Conference draft uniform legislation?

A. The Conference works thoroughly and slowly. Work on the Uniform Commercial Code continued for 12 years before it was finally offered to the states for enactment. The Uniform Consumer Credit Code required more than 4 years in its preparation.

In drafting uniform legislation the Commissioners build solidly on existing law and practice but where they find that by reason of historical accident or some like cause existing laws or practices in their judgment are unsound, archaic or sometimes silly they do not hesitate to provide for their repeal.

Q. Why did the Conference draft Consumer Credit legislation?

A. The major underlying reason for drafting Uniform Credit legislation is the phenomenal growth of consumer credit during the 20th century. The Conference notes that by the latest Federal Reserve figures there is close to 100 billion dollars of installment consumer credit outstanding at any one time in the United States, and if household mortgage credit is added to this figure the aggregate total is in the neighborhood of 330 billion dollars. The Conference felt that the extension and growth of such credit are not only matters of social and economic concern, but, also, are matters of major consequence to which the law must adjust.

Q. What is meant by the term "adjust"?

A. As consumer credit developed it became apparent that credit of this type could not live within low rate ceilings. Therefore, a steady series of legal principles or special legislation evolved to circumvent and avoid low rates. This resulted in a proliferation of legislation throughout the nation and despite such proliferation there were still widespread consumer abuses. In 1957, recognizing the need of uniform legislation, the Council of State Governments requested the National Conference to draft such a Credit Code. The Code project got underway in 1964. By that time the Conference was convinced that the need for extensive study and a major drafting effort was clear.

Q. What trend did the Conference follow in developing the Code?

- A. The Conference decided to deal with the entire subject of Consumer Credit comprehensively and on fundamental lines, to review all laws relating to Consumer Credit in depth, to consider the background and reasons for Consumer Credit and economic and social aspects of it, and to draft legislation that would treat the entire subject of Consumer Credit on scientific lines rather than a continuance of historical acts.
- Q. In defining the Code, the term "balanced" Consumer Protection law has been used. What does this mean?
- A. The UCCC 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. It imposes a single and standard set of maximum charges on almost 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. The Code puts all creditors extending consumer credit on virtually an even or balance footing so far as maximum charges and control of balances are concerned. It stimulates competition by eliminating artificial barriers to entry into the credit granting business and by requiring disclosure of the cost of credit both in terms of dollar amounts and in terms of an annual percentage rate. It is a balanced code, fair to all creditors operating in the consumer credit field and fair to consumers.
- Q. Should consumer legislation be drafted and enacted at the federal or state level?
- A. The National Conference felt that the Code should be enacted at the state level. The Commissioners stated that between a particular buyer and a seller, or a particular borrower and lender both located in the same state it is quite difficult to think of a much more local type of transaction than consumer credit. They, also, pointed out that consumer credit is usually a transaction of small size, ranging from a less than \$5.00 sale as a part of a store revolving account or a shopper's credit card operation to purchase of automobiles on time or borrowing from the installment credit department of banks ranging in most cases from \$100 to \$3,000. The Conference, also, felt that if the Federal government took control of Consumer Credit entirely this would constitute a very large shift in control from the state to the federal government of an important aspect of American life.
- Q. What does the federal government think about federal-state control of Consumer Credit?

A. The Banking & Currency Committees of the Senate and House of Representatives in considering the recently enacted Federal Truth-in-Lending Act expressed an awareness of the federal-state problem and were reluctant and hesitant to pre-empt from the states the field of consumer credit. As a result, the recently enacted federal bill included a provision that the Board of Governors of the Federal Reserve system "shall exempt from the requirements of the Act any class of credit transaction which the Board determines is subject to state law which requires disclosure substantially similar to the federal requirements and contains adequate provisions for enforcement." Thus, it follows that the federal government definitely provided a way and a means by which consumer credit may remain a state controlled field.

Q. Will adoption of the Uniform Consumer Credit Code exempt Alaska from supervision of consumer credit by the federal government?

A. Yes, According to all current information available the UCCC meets the Federal Reserve test and would divest the state of federal supervision. As far as the Turth-in-Lending Act supervises disclosure and related provisions, the Code does likewise and authorities say is even more stringent than the federal law. in addition, the UCCC goes further in that it sets maximum ceilings and correction of virtually all known consumer abuses.

Q. We have been told by some that if the Legislature copies the Federal Truth-in-Lending Act into Alaska law the federal government will divest itself of control of credit in the state. Is this true?

A. Not necessarily. There is a wide field of interpretation regarding Federal Reserve acceptance of supervisory staffing, regulations, transaction requirements etc.

Q. Does the Code contain the regulations pursuant to the Federal Truth-in-Lending law?

A. The UCCC bill, as introduced in the Alaska Legislature, includes all regulations pursuant to the federal act.

Q. What confusion could arise out of copying the federal law into state law rather than passing the UCCC?

A. (1) There is a question as to whether the state would be divested of Federal supervision.
(2) Such action may lead to conditions in which creditors would be required to make double disclosures.
(3) The law would be a "bits and pieces" type of legislation which usually creates confusion in the marketplace.
(4) Such action is completely unnecessary since the federal act went into effect on July 1, 1969, thus negating any need for a small "Federal Act."

Q. Is exemption from Federal supervision a strong argument for the passage of the UCCC?

A. Yes. Most Alaskans desire to retain jurisdiction over consumer credit and creditors in the consumer credit field of Alaska certainly do not want to operate under two sets of laws. This fact is one of the major reasons why the enactment of the Code is advisable.

Q. Were attempts made to influence the preparation of the Code in order to preserve segmented consumer credit?

A. Yes. Strong pressures were brought to bear upon the National Conference by opponents of consumer protection legislation to produce more of the same confusion which already exists throughout the nation in the consumer credit field. The status quo is referred to as segmented with segmentation being based to a considerable extent on types of creditors, that is, small loan companies, retail merchants, commercial banks, credit unions etc. The Conference was urged to preserve all this segmentation, some or all of the variations in maximum rate ceilings on finance charges, and some or all of the varying methods for starting ceiling rates. In fact, the Conference was pressured to do nothing more than compound the existing confusion.

Q. How did the Conference react to this pressure?

A. The National Conference took the position that a policy of preserving and attempting to improve one or more existing types of legislation would do nothing more than preserve and stratify types of classifications that are now causing confusion and have partially broken down. The Conference felt it could make no contribution unless a comprehensive approach was adopted.

Q. How much of the installment credit outstanding in the United States do the various segments of the credit industry possess?

A. As of December 31, 1967, the percentage share of different segments of the consumer credit industry in installment consumer credit was as follows:

Commercial banks	43.6%
Sales finance companies	21.6%
Credit unions	11.8%
Consumer finance (small loan) companies	8.1
Other financial institutions insurance companies, savings & loan associations, etc.)	2.5%
Retail outlets	12.4%
Total	100.00%

Q. What limits did the Conference feel were needed in the Code's coverage?

A. The Code covers consumer credit as opposed to business credit.

Q. Why is not the purpose test a part of the Code?

A. There are difficulties in applying a pure purpose test. Actually, purpose is nothing more than the mental intent of an individual. The Code made the distinction between consumer credit and business credit on the basis of whether the debtor is a natural person or whether the debtor is an organization. Organization as defined includes corporations, business trusts, partnerships, associations or governmental entities or bodies.

Q. Are the Code's provisions fair and equitable to both consumers and the credit industry?

A. Yes. The provisions are workable and provide a greatly superior base for handling consumer credit than the mass of legislation presently on statute books throughout the nation. Although some provisions may appear to favor industry and others favor consumers, in actual fact the provisions will be beneficial to both sides of the economic spectrum.

Q. How does the Code affect usury provisions?

A. The Code provides for the outright termination of all usury provisions and rate ceilings in the case of most business credit. The reasoning which supports this principle is that the operation of the money market and the economic rules of supply and demand are better control factors for interest charges in business credit than any legislation. It, also, notes that business debtors can bargain satisfactorily without the need of legislative assistance. The operation of existing general usury statutes has become so much an empty shell and so generally absurd in its unreasonable and haphazard application that they should be repealed outright as to substantially all business credit, according to most authorities.

Q. In the case of consumer credit, are rate ceilings preserved?

A. Rate ceilings are preserved but are evenly distributed across-the-board to all types of consumer credit.

Q. What is consumer credit as defined by the Code?

A. Consumer credit is credit extended to natural persons for personal, family, household or in some instances agricultural use.

Q. Is there a dollar limitation in regard to the jurisdiction established in the Code?

- A. Yes. Consumer credit is credit extended up to a dollar jurisdictional amount of \$25,000 except in the case of consumer credit secured by real estate where there is no jurisdictional limit.
- Q. What are the rate ceiling found in the Code?
- A. The rate ceiling prescribed is on a graduated basis with a maximum of 36% per annum on the first \$300, 21% per annum on balances of \$300 to \$1,000 and 15% per annum on balances above \$1,000 with the composite rate resulting from these graduated ceilings leveling off at a base ceiling of 18% per annum on balances from \$2,500 to \$2,900 and above. A major exception from these standard rate ceilings is in sales credit revolving account where the ceilings are 24% per annum or 2% per month on the unpaid balance on the first \$500 of balance, and 18% per annum or 1½% per month on the unpaid balance in excess of \$500.
- Q. How does the Conferencd justify the standard recommended rate ceilings?
- A. First, the Conference emphasizes the basic principle that legislation should not attempt to fix rates in the sense that public utility commissions prescribe rates that may be charged by public utilities. Rather, the Conference says the legislation should do nothing more than fix maximum ceilings which may not be exceeded but should be at a level to permit the extension of almost any type of consumer credit through legitimate channels.
- Q. Upon what does the Code rely to fix effective rates?
- A. The Code places reliance upon the operation of competition to keep actual rates charged below the legislative ceiling prescribed.
- Q. How does the Code provide ways to see that the competition will keep lower than established ceiling rates?
- A. The Code notes competition, in order to keep rates low, should be permitted to operate to a maximum extent and provides for "easy" entry into the lending field to make it as competitive as the retail field. This means that as far as is possible all extenders of credit must compete on equal terms with all other extenders of credit. It, also, means that a consumer must be able to intelligently shop for credit.
- Q. The Code, to encourage competition, provides "easy" entry into the lending field. What does this mean?
- A. "Easy" entry refers to the provision of the Code which makes it possible for individuals or businesses to enter the cash loan fields without being restricted by artificial barriers.

Q. Are "easy" entry lenders regulated?

- A. Yes. The Administrator will establish regulations governing such lenders and the Code, itself, provides that –**
- (1) Such lenders must secure a license from the Administrator.**
 - (2) They cannot loan money for more than 18% per annum.**
 - (3) They cannot accept deposits.**
 - (4) They must pay the same fee to the Administrator's office on credit outstanding during the year as all other lenders.**
 - (5) They must adhere to all disclosure requirements.**
 - (6) They must abide by all consumer protection provisions of the Code.**

Q. Why do banks have regulations applicable to lending money not placed on "easy" entry lenders?

- A. Banks use depositors' money for lending purposes and the various governments provide regulations to protect the depositor. "Easy" entry lenders cannot accept deposits and they will be lending their own personal money.**

Q. Can "easy" entry licenses be revoked?

- A. Yes. Any irregular practice is sufficient cause for revocation of license.**

Q. Are these basic principles of the Code?

- A. The Code, as a whole, is framed on these principles.**

Q. Does this establish a new principle in American thinking?

- A. No. These principles involve no novelty in basic American thinking. In most areas of economic life in America price-fixing by governmental fiat has been avoided rigorously. Price fixing is inherent in general usury statutes and actually constitutes an exception to the traditional American economic view.**

Q. Opponents to the Code say that the rate ceilings as applied to the total consumer credit market will cause an increase in finance charges to the consumer. Is this true?

- A. This is not true. Studies made by the National Conference point out that competition does in fact keep interest and finance charges down as much in the case of extension credit as in other types of transactions. Examples include interest rates charged to corporations which under existing law in 30 states do not have full benefit of usury statutes. In these states interest rates have been no higher than in states where usury statutes exist. In Massachusetts and New Hampshire there have been no general usury statutes for many years but the general level of interest**

rates and finance charges in these states are not significantly different from those in other states. In automobile financing, rates actually charged are in most cases materially lower than ceilings prescribed in the motor vehicle retail installment sales act.

- Q. What fact did the Conference recognize as primary in setting the rate ceilings in the Code?**
- A.** The Conference recognized that rates must be sufficient to cover the cost of money, the cost of administering the credit extended, and the risk of nonpayment.
- Q. What other factors operate in the cost of granting credit?**
- A.** The Commissioners stated that the cost of money varies in relation to general money market conditions and that the cost of money today is higher than for many years, perhaps, as far back as the stock market crash in 1929. The Conference, also, pointed out that in consumer credit the cost of administering the credit is a most important factor. Commissioners noted one study which showed the average operating expenses other than bad debt reserves of many major national finance companies to be \$10.40 on the first \$100 of each loan.
- Q. Does this explain the higher rate ceilings prescribed for the first \$300 of any transaction?**
- A.** Yes, the high cost of setting up any credit transaction on the books of a credit extender explains the high ceiling rate prescribed for the first \$300. Actually, the rates prescribed fall at about the midpoint of existing rate limitations in the small loan area and are somewhat above present rates in the area over \$3,000.
- Q. What did money market studies reveal to the National Conference?**
- A.** Money market studies and economic advice given to the National Conference consistently indicated that the principal effect of fixing maximum rates at a higher or lower level is to permit larger or smaller numbers of consumers into the credit market. High maximums permit more persons to obtain credit from legitimate sources. In contrast, low maximums decrease the number of persons who may obtain credit and drive the borrower and/or buyer to illegal loan sharks.
- Q. Is competition the primary factor in establishing effective rates favorable to consumers?**

A. Yes. The Code's provisions for improved operation of competition in credit are calculated to keep the rates actually charged well below the maximum ceilings stated.

Q. What are the disclosure requirements in the Code?

A. The Code requires the seller 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 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.
- (15) A description of any security interest taken.

Q. Will the disclosure requirements of the Code enhance competition as a basic principle set forth in the Code?

A. Yes, such disclosure requirements complement quite closely the maximum rate provisions of the Code. They do so by developing a single set of measuring standards by which consumers may shop for credit. Thus, they enhance competition which is relied upon by the Code to keep rates reasonably low.

Q. Does the Code place limitation on creditors' remedies?

A. Yes. The Code contains a number of limitations on creditors' remedies. This is the true reason that there is opposition to the adoption of the Code since these remedies are pure consumer protection.

Q. Does the Code prohibit the use of multiple agreements?

A. Yes. Sellers are prohibited from using multiple agreements for the purpose of obtaining a higher finance charge than would be otherwise permitted.

Q. Are sellers and lessors prohibited from taking negotiable promissory notes to evidence consumer obligation?

- A. Yes. The promissory note use has been one of the major consumer abuses where instead of selling the actual installment contract a promissory note has been utilized as a negotiable instrument. Producers of the notes have been held not responsible in any way for claims and defenses of the buyer against the seller.
- Q. Does the Code provide that assignees shall be subject to claims and defenses of the buyer against the seller?
- A. Yes. The Code provides that an assignee is equally responsible for the quality of goods and services as the original seller. This is an issue of long standing and it is admitted in the consumer credit field. Sellers and banks and finance companies buying sellers' papers argue that assignees shall not be subject to claims and defenses of the buyer against the seller. Consumers, on the other hand, argue with equal strength that a great portion of consumer abuses are traceable to a bank or finance company which is free from claims and defenses of the buyer against the seller.
- Q. What is the opinion of merchants regarding this issue?
- A. The legitimate merchant does not fear this situation nor should any bank or finance company which does business with legitimate merchants since it has been historically true in Alaska that legitimate stores make restitution for defective goods and services.
- Q. Does the Code place controls upon balloon payments?
- A. yes. If any scheduled payment is more than twice as large as the average of earlier scheduled payments, the buyer has a right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing must be as favorable to the buyer as the terms of the original sale.
- Q. Does the Code place limitations on the amount and type of security that may be taken in sales transactions?
- A. Yes. A seller may take a security interest
- (1) in the property sold;
 - (2) in goods upon which services are performed;
 - (3) in property in which goods sold are installed; or
 - (4) in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or the services, if, in the case of a security interest in land, the debt secured is \$1,000 or more or in the case of a security interest in goods the debt secured is \$300 or more.
- Q. Does the Code make any provisions regarding the assignment of earnings?

A. Yes. A seller or lessor may not take an assignment of earnings of the buyer or lessee for payment or as a security for payment of a debt arising out of a consumer credit sale or a consumer lease.

Q. What does the Code do in respect to referral sales?

A. Referral sale contracts cannot be entered into by sellers and buyers. Any inducement to enter into such a contract is in violation of the Code and the buyer or lessee at his option may rescind the agreement or retain the goods delivered and the benefit of any service performed without any obligation to pay for them.

Q. May terms be changed in the case of revolving charge accounts?

A. Yes. If a change is made in the terms of a revolving charge account the merchant must give the buyer written notice at least 3 times with the first notice issued at least six months before the effective date of the change.

Q. Are there any exceptions to this requirement?

A. Yes. The notice specified is not required if:

- (1) The buyer after receiving notice of the change agrees in writing to the change;
- (2) The buyer elects to pay an amount designated on a billing statement as including a new charge for the benefit offered to the buyer when the benefit and charge constitute a change in terms and when the billing statement also states the amount payable if the new charge is excluded;
- (3) The change involves no significant cost to the buyer;
- (4) The buyer has previously consented in writing to the kind of change made and notice of the change is given to the buyer in two billing cycles prior to the effective date of the change; and
- (5) The change applies only to purchases made or obligations incurred after a date specified in a notice of the change given in two billing cycles prior to the effective date of the change.

Q. What constitutes notice in regard to changes in revolving credit account?

A. The notice is given to the buyer when mailed to him at the address used by the seller for sending periodic billing statements.

Q. Does the Code provide for a cancelling provision in home solicitation sales?

A. Yes. A buyer has the right to cancel a home solicitation sale until

midnight of the third business day after the day on which he signs the agreement or offer to purchase.

- Q. What are the technical procedures in regard to cancellation?**
- A. Cancellation occurs when the buyer gives written notice of cancellation to the seller.
- Q. Where does the Code require that such notice be sent?**
- A. The notice must be sent to the address listed in the agreement or offer to purchase.
- Q. What other provisions for cancellation does the Code provide?**
- A. The notice of cancellation if by mail is given when the notice is properly addressed with postage prepaid and deposited in a mail box.
- Q. Does the notice of cancellation have to take a particular form?**
- A. No. Notice of cancellation is sufficient if it indicates by any form of written expression the intention of the buyer to cancel the home solicitation sale.
- Q. Are there any circumstances under which the buyer may not cancel a home solicitation sale?**
- A. Yes. The buyer may not cancel a home solicitation sale if he has requested the seller to provide goods or services without delay because of an emergency and the seller in good faith has made a substantial beginning of performance. The buyer also may not cancel a home solicitation sale if the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.
- Q. Does the Code provide for the return of goods given as collateral or the down payment by the seller in cancelled home solicitation sales?**
- A. Yes. Within 10 days after a home solicitation sale has been cancelled the seller must return any payments made by the buyer and any note or other evidence of indebtedness. If the down payment included goods traded the goods must be returned in substantially as good condition as when received by the seller.
- Q. Is there a provision made whereby the seller may retain a cancellation fee?**
- A. Yes. The seller may retain a cancellation fee amounting to 5% of the cash price but not exceeding the amount of the cash down payment. However, if the seller fails to comply with any obligation imposed by the Code, or if the buyer voids the sale on

any ground independent of his right to cancel provided by the provision of the Code, the seller is not entitled to retain a cancellation fee.

Q. What does the Code provide in regard to the duty of the buyer to the seller of the home solicitation sale?

A. Upon demand, the buyer must give to the seller any goods delivered by the seller pursuant to the sale, but he is not obligated to deliver the goods to any place other than his residence. If the seller fails to demand possession of the goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. The Code states that 40 days is a reasonable time. The buyer is required to take reasonable care of the goods in his possession both before cancellation or revocation and for a reasonable time afterwards during which time that goods are otherwise at the seller's risk.

Q. Does the Code provide limitations on garnishment?

A. Yes. The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce payment of a judgment arising from a consumer credit sale, consumer lease or consumer loan may not exceed the lesser of:

- (1) 25% of the disposable earnings for that week; or
- (2) The amount of which his disposable earnings for that week exceed 40 times the Federal Minimum Hourly Wage. Since the Federal Minimum Hourly Wage at this time is \$1.60, this means \$64.00.

Disposable earnings as defined by the Code means that part of the earnings of an individual remaining after the deductions of those earnings of amounts required by law to be withheld.

Q. What does the Code provide regarding discharging employees for garnishment?

A. The Code states emphatically that no employer shall discharge an employee because his wages have been subject to garnishment.

Q. What does the Code say in regard to repossession of goods and suit for balance due?

A. The Code, as introduced, provides that the seller may repossess goods with a cash price under \$1,000 where the debt is not being repaid or may sue for the balance due but the seller may not do both. He must make a choice between the two actions. Deficiency judgments are forbidden.

Q. We note that the Code contains language in regard to unconscionable agreements and conduct. Just what does this section do?

A. The Conference gave a great deal of study to the fact that the greatest majority of consumer abuse is traceable to a relatively small proportion of fringe operators who do not hesitate to over-reach whenever they can whether inside or outside the law. The question arose as to how a statute can provide protection against this kind of conduct. The Commissioners felt that realistic legislation is of limited value unless it has some language pointed toward this problem and believe there is no escape from having that language flexible enough to adjust to the great variety of schemes and practices that an ingenious type of individual may conceive. Therefore, the Code provided "Unconscionability" to meet this situation. The Code contains language with respect to unconscionable agreements and conduct. This has been done for the simple reason that the Commissioners could see no escape from this provision if the provision was to be flexible enough to adjust to the maneuvers of fringe operators.

Q. Is unconscionability a new concept?

A. Unconscionability is not a new concept. There have been decisions providing relief from unconscionable conduct running back over 100 years. It is, also, a part of the Uniform Commercial Code and there is equal or more reason to use it in the Consumer Credit Code.

Q. Are there any limitations on the action of unconscionability?

A. Yes. Considerable care is used to keep the concept within strict boundaries. Debtors for example cannot determine that conduct of a creditor is unconscionable. The Administrator cannot make such a determination, only courts can make this determination, and in courts only the judge and not the jury. The Code provides that the Administrator may bring a civil action to restrain a creditor from engaging in a course of unconscionable conduct either in effecting consumer credit transactions or in collection of debts arising from these transactions. In every case, however, it is only a court that can make a determination of unconscionability.

Q. How will the Code be administered?

A. The Code provides for administration by the State Banking Commissioner, and it prescribes his powers and functions. In the Code he is referred to as the "Administrator."

Q. What are his powers?

A. (1) He will administer the consumer credit market;

- (2) He may bring action on behalf of an individual or a class of debtors to recover excess charges made by a creditor;
- (3) He may bring actions to restrain a creditor from engaging in unconscionable conduct;
- (4) He may issue orders and subject to appropriate administrative review he may order a creditor or others to cease and desist from engaging in violations of the Code;
- (5) The Administrator is given substantial investigatory powers with respect to consumer credit extended by merchants or finance companies; and
- (6) He is expected to cooperate with officials having supervisory power over banking institutions to obtain compliance with Code provisions.

In addition, the Administrator

- (1) has power to issue regulations with respect to specified subjects;
- (2) he may foster and aid programs for education of consumers; and
- (3) encourage establishment of non-profit consumer credit counseling agencies.

Q. Does the Code provide for advisors to the Administrators?

A. Yes. The Code recognizes the considerable power of the Administrator and to aid and assist him in the effective performance of his duties the Code provides for a Council of Advisors on Consumer Credit. These are to be drawn in relatively equal proportions from consumers or the public, on the one hand, and from members of the consumer industry on the other.

Q. How is the office of the Administrator financed?

A. All persons or businesses doing credit business must so notify the Administrator and must pay to the Administrator \$10 for every \$100,000 outstanding credit during a fiscal year. This money will be used to carry on the work and meet the expenses of the office of the Administrator.

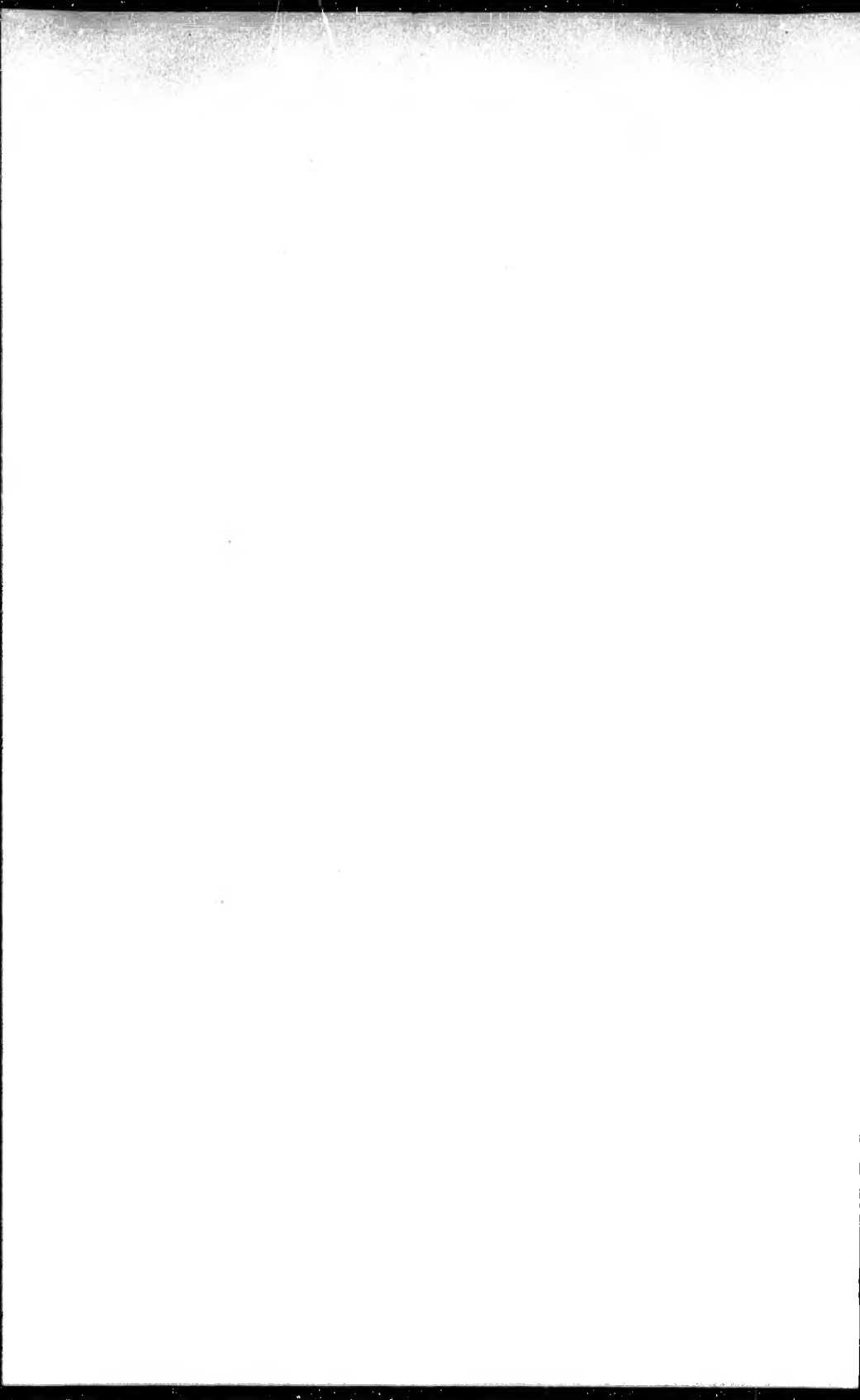
Q. Do merchants of Alaska support the adoption of the Uniform Consumer Credit Code?

A. Yes, even though the Code will require merchants to pay a substantial fee for its administration which heretofore has not been required of retailers.

Q. Why is the retail industry favorable to its adoption?

A. (1) It is the finest consumer protection Code ever prepared.

- (2) The public policy demands its passage.
- (3) The Code will do away with the "Bits and Pieces" type of credit legislation.
- (4) The UCCC will give the state as near total consumer protection as is legislatively possible.
- (5) The Code solves present and future credit problems in a way that will not require future legislative action.
- (6) Creditors can live with the Code, and though there are some provisions which retailing does not like, the Code is a document, which taken as a whole, retailing can support and under which retailing can operate. This is the "on balance" concept which is basic to the Code.
- (7) The Code attempts to satisfy the interests of the diverse groups represented in the credit field.
- (8) The code is favored by the Alaska Retail Association, The Alaska State Chamber of Commerce and most other chambers throughout the state because they recognize it as one of the most fair documents ever devised in th area of consumer credit. Alaskan retailers acknowledge the fact that problems do exist in the consumer credit field and are proud to suport UCCC as the best existing answer to those problems - from the standpoint of both consumer and creditor.





Instalment Credit GUIDE

— EXTRA EDITION —

NUMBER **183** AUGUST 19, 1968

UNIFORM CONSUMER CREDIT CODE

With Prefatory Note and Comments

FINAL DRAFT

(DRAFT SUBJECT TO CHANGES TO CONFORM TO
CONSUMER CREDIT PROTECTION ACT REGULATIONS)

Extra copies of this Report may be obtained by writing
Commerce Clearing House, Inc., 4025 W. Peterson Ave.,
Chicago, Illinois 60646. Price: 1-4 Copies, \$2.00 each; 5-9
Copies, \$1.80 each; 10-24 Copies, \$1.70 each; 25-49 Copies,
\$1.50 each.

COMMERCE CLEARING HOUSE, INC.

PUBLISHERS of TOPICAL LAW REPORTS
NEW YORK CHICAGO WASHINGTON

About This Code

The Uniform Consumer Credit Code, having been formulated with the concept that "credit transactions" is but one subject of the law, is intended to replace various laws regulating consumer and other credit transactions.

Application . . . The UCCC is generally applicable to:

- (1) consumer credit sales of goods or services for \$25,000 or less, consumer leases, and consumer credit sales of an interest in land for any amount;
- (2) consumer loans of \$25,000 or less, except that loans secured by an interest in land are covered for any amount; and
- (3) insurance provided in relation to the consumer credit sale, consumer loan or consumer lease.

Purchases made and debts incurred must be primarily for personal, family, household or agricultural purpose.

Facets . . . The Code provides maximum credit service charges and is intended to replace general usury laws, consumer credit regulatory acts imposing maximum charges, and other acts providing maximum charges for loans or extensions of credit. Provisions cover the enforcement of rights, and other provisions govern administrative regulation. Advertising, referral sales, license for supervised loans, assignment of earnings, unconscionability, revolving charges, cross-collateral, adjustment of dollar amounts, prohibition of certain negotiable instruments, garnishment, and home solicitation are just a few of the many facets covered by this Code.

Exemptions . . . The Code exempts:

- (1) credit extended to governments or their agencies;
- (2) sale of insurance by an insurer, except for the sale of credit insurance;
- (3) public utility or common carrier rates under state or federal regulation; and
- (4) licensed pawnbroker transactions.

Consumer credit sale exemptions include 30-day charge accounts and services furnished on short-term credit for which no finance charge is made. Consumer loan exemptions include loans secured by business collateral. Except for disclosure and remedies, sales or loans involving an interest in land are exempt if the finance or service charge is 10% or less per year.

Federal . . . The UCCC conforms to the requirements of the Federal Consumer Credit Protection Act (INSTALMENT CREDIT GUIDE, No. 177, Extra Edition, May 22, 1968, and No. 177, Second Extra Edition, May 24, 1968) so that a UCCC state is exempt from the federal requirements.

Final Draft . . . This Final Draft of the UCCC was approved by the National Conference of Commissioners on Uniform State Laws on July 30, 1968, and by the American Bar Association on August 7, 1968.

COMMERCE CLEARING HOUSE, INC.

UNIFORM CONSUMER CREDIT CODE

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

Final Draft*

UNIFORM CONSUMER CREDIT CODE

With Prefatory Note and Comments*

* Subject to Style Changes and Changes to Conform to Requirements and Regulations of Board of Governors of the Federal Reserve System Pursuant to the Federal Consumer Credit Protection Act, and to Additions to and Corrections of Prefatory Note and Comments.

SPECIAL COMMITTEE ON

RETAIL INSTALLMENT SALES, CONSUMER CREDIT,
SMALL LOANS AND USURY

Alfred A. Buerger, 1525 Marine Trust Building, Buffalo, New York 14203
Chairman
Robert Braucher, Harvard Law School, Cambridge, Massachusetts 02138
Jack Davies, 2100 Summit Avenue, St. Paul, Minnesota 55105
Harold C. Havighurst, Northwestern University School of Law, Chicago,
Illinois 60611
Walter D. Malcolm, One Federal Street, Boston, Massachusetts 02110
Harold E. Read, Jr., One Constitution Plaza, Hartford, Connecticut 06103
George R. Richter, Jr., 458 South Spring Street, Suite 640, Los Angeles,
California 90013
Robert E. Sullivan, University of Montana School of Law, Missoula,
Montana 59801
William H. Wood, 210 Walnut Street, Harrisburg, Pennsylvania 17108
Eugene A. Burdick, P. O. Box 757, Williston, North Dakota 58801
Chairman of Section F

Ex-Officio

William J. Pierce, University of Michigan Law School, Ann Arbor, Michigan
48104 President, NCCUSL
Albert E. Jenner, Jr., 135 South La Salle Street, Chicago, Illinois 60603
Chairman, Executive Committee, NCCUSL
Allison Dunham, 1155 East Sixtieth Street, Chicago, Illinois 60637
Executive Director, NCCUSL

Staff

William D. Warren, University of California School of Law, Los Angeles,
California 90024 Reporter-Draftsman
Robert L. Jordan, University of California School of Law, Los Angeles,
California 90024 Reporter-Draftsman
Robert W. Johnson, Graduate School of Industrial Administration, Purdue
University, Lafayette, Indiana 47907 Reporter-Economist
Marion Benfield, University of Illinois Law School, Champaign, Illinois 61820
Consultant on Real Property Transactions
Carl Feisenfeld, 650 Madison Avenue, New York, N. Y. 10022 Consultant on
Consumer Credit Counseling Agencies and Wage Earner
Receiverships
Homer Kripke, New York University School of Law, 40 Washington Square,
VH 430 South, New York, N. Y. 10003
Consultant on Consumer Leasing
William F. Young, Jr., Columbia University School of Law, 435 116th Street,
New York, N. Y. 10027
Consultant on Credit and Related Insurance
Marion M. Buerger, 1525 Marine Trust Building, Buffalo, New York 14203
Secretary to the Special Committee

Prefatory Note

This, the Final Draft of the Uniform Consumer Credit Code, has been approved by the National Conference of Commissioners on Uniform State Laws on July 30, 1968 and by the American Bar Association on August 7, 1968. It is, however, subject to style changes and to changes to conform it to the requirements and Regulations of the Board of Governors of the Federal Reserve System pursuant to the Federal Consumer Credit Protection Act. Moreover, this Prefatory Note and the Comments are subject to additions and corrections.

The second previous draft, the Tentative Final Draft—Working Draft No. 8, was prepared prior to action by the Congress on a final version of S. 5 (the Proxmire "Truth-in-Lending Act") or H. R. 11601 (the Sullivan "Consumer Credit Protection Act"), but after the passage of those bills by the Senate and the House, respectively. Wide distribution of that draft was made so that the Special Committee might have the advantage of further comments before the 1968 Annual Meeting of the National Conference.

The last previous draft, the Revised Tentative Final Draft—Working Draft No. 9, was prepared in the light of the enactment by the Congress and the approval by the President of S. 5, the Consumer Credit Protection Act (Public Law 90-321, 82 Stat. 146) and, specifically, of § 123 of that Act as follows:

"§ 123. Exemption for State-regulated transactions

The Board [of Governors of the Federal Reserve System] shall by regulation exempt from the requirements of this chapter [i.e., Chapter 2 of Title I of the Consumer Credit Protection Act, relating to disclosure in consumer credit transactions], any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter, and that there is adequate provision for enforcement."

and in the beliefs that:

1. The Board of Governors of the Federal Reserve System will exempt by regulation from the disclosure requirements of Chapter 2 of the Consumer Credit Protection Act the classes of consumer credit transactions governed by the Uniform Consumer Credit Code within any State which enacts the Code, and

2. The provisions of the Uniform Consumer Credit Code relating to consumer credit advertising will conform to the requirements of Chapter 3 of Title I of the Consumer Credit Protection Act, relating to Credit Advertising, and to any implementing regulation prescribed by the Board of Governors of the Federal Reserve System pursuant to § 105 of the Consumer Credit Protection Act as follows:

"§ 105. Regulations

The Board shall prescribe regulations to carry out the purposes of this title [i.e., Title I including Chapter 1, General Provisions, Chapter 2, Credit Transactions, and Chapter 3, Credit Advertising]. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith."

Time has not permitted the Special Committee to ascertain the views of the Board of Governors of the Federal Reserve System with respect to these matters. Consequently, the Special Committee has requested and received from the National Conference authority, subject to the approval of the Executive Committee of the National Conference, and with the understanding that the changes will be submitted to the National Conference at its 1969 Annual Meeting for ratification, to make changes in this Final Draft to conform it to the requirements and regulations of the Board of Governors of the Federal Reserve System.

Research

Prior to the creation of the Special Committee, the American Bar Foundation, at the request of the Conference and of the Committee's predecessor, the Special Committee on a Uniform Retail Instalment Sales Act, undertook a thorough survey of consumer credit laws of all the States. In 1965, the American Bar Foundation published its "Trends in Consumer Credit Legislation" prepared by Miss Barbara A. Curran of the Foundation's research staff. The book has proved invaluable to the Committee.

Since the creation of the Committee, its members and staff have prepared papers on various legal, economic and sociological aspects of consumer credit. These papers have provided bases for the Committee's discussions with its staff and Advisory Committee and Panels of Advisors on specific subjects, as well as for its policy decisions.

Basic Assumptions

This draft, like those which preceded it, is predicated on various basic assumptions, including:

First, the successful American way of permitting competition to determine prices of non-monopoly commodities and services should also be allowed to apply to the pricing of money and credit;

Second, usury laws imposing inflexible price ceilings on money and credit are historical vestiges of the erroneous supposition that emperors, kings and governments could effectively fix all prices; the need to escape the rigidity of usury laws has led to special laws, which only the expert can find or understand, for most types of credit transactions requiring a charge higher than the usury rate;

Third, consumer credit legislation should be contained in one law so that any attorney can quickly and effectively advise his consumer client;

Fourth, for competition effectively to determine the pricing of money and credit requires:

a. for credit grantors, relatively easy entry into the market to avoid monopoly;

b. for knowledgeable and sophisticated credit recipients, eliminating or at least minimizing controls;

c. for the protection of less knowledgeable and less sophisticated credit recipients:

1. uniform disclosure of the costs and terms of credit to permit informed judgments as to whether or not to use credit, to facilitate

Prefatory Note

"shopping for credit," and to enable the forces of competition to work freely;

2. ceilings on the price of credit, restrictions on creditors' rights and remedies, and enhancements of debtors' rights and remedies sufficient to prevent overreaching by creditors without unduly limiting the availability of credit;

3. administrative powers and self-executing judicial remedies ample to assure compliance with statutory requirements;

4. enough financial resources available to the Administrator to enable him effectively to exercise the powers of his office; and

5. a broad-gauged Advisory Council to advise the Administrator in the exercise of his powers in the interests of our entire society and economy.

In preparing this draft on these assumptions, the Special Committee has recognized that:

a. a combination of too low ceiling rates, too substantial restrictions on creditors' rights and remedies, or too great enhancements of debtors' rights or remedies, might deprive the less credit-worthy of lawful sources of credit and drive them to "loan sharks" and other illegal credit grantors in whose hands they will enjoy no legal protections; it was to remedy the "loan shark" evil that the Russell Sage Foundation proposed its Uniform Small Loan Laws; and

b. the provisions governing ease of entry into the market, uniform disclosure of costs and terms, rate ceilings, restriction of creditors' rights and remedies, enlargement of debtors' rights and remedies, and powers granted to the Administrator are so inextricably interrelated that any substantial change in one area requires a major review of the balance struck in all other areas.

In order to permit the organization of panels of advisors on the subjects of consumer credit counseling agencies and wage earner receiverships before completing its consideration of those subjects, the Committee has made no attempt to complete the drafting of provisions relating to them, but has reserved for them Articles 7 and 8 of the Code in case, after 1968, the Committee recommends and the National Conference approves the inclusion in the Code of provisions relating to those subjects.

Uniform Legislation Desirable

The Special Committee believes that consumer credit legislation should be uniform among the States. Uniform laws on the subject will benefit both the consumer and the consumer credit industry.

Consumer understanding of credit transactions and of alternative sources of consumer credit is a primary essential for the effective operation of both consumer credit laws and of the forces of competition in consumer credit extensions. The mobility of our people makes uniformity of State consumer credit laws a prerequisite for maximum consumer understanding.

The extent to which segments of the consumer credit industry operate across the State lines makes uniformity of consumer credit laws desirable to facilitate and to reduce the costs of their interstate operations, and thus to promote competition and so ultimately to reduce the costs to the consumer of credit extensions.

Prior Drafts

The First Tentative Draft (Working Draft No. 1) was submitted for consideration to the National Conference at its 1966 Annual Meeting. Comments on that draft by the Committee's advisors and others at that meeting led the Committee to the conclusion that loan transactions and sales transactions should be treated separately.

In reaching that conclusion, the Committee was and is aware that, sociologically and economically, sales credit and loan credit are alike and that their separate treatment results in much duplication in drafting. Nevertheless, we are mindful of the weight given to Uniform Acts by Courts of States which have not enacted them. Thus, long before the Uniform Commercial Code was enacted or even introduced in New York, the New York Court of Appeals relied in part on a provision of the Uniform Commercial Code in overruling the Court's prior decisions on privity of contract and determining who may recover upon a breach of warranty in a sale of goods. The Committee believes that any encouragement to the courts of a State which has not enacted the Uniform Consumer Credit Code to rely on the Code's provisions to reject the time sale price doctrine would have most unfortunate social and economic consequences for both consumers and credit grantors.

A Second Tentative Draft (Working Draft No. 4) was prepared for consideration by the National Conference at its 1967 Annual Meeting. In order to obtain a maximum of comments, suggestions, and criticisms, more than 4,000 copies of the draft and invitations to attend a public discussion of it were distributed. Section F of the National Conference and the Committee accordingly held a public hearing on Working Draft No. 4 in June 1967.

The Second Tentative Draft (Working Draft No. 4) together with an Addendum to it predicated on the written and oral comments received before, during and after the June, 1967, hearing, were submitted to the National Conference at its 1967 Annual Meeting.

The discussions at the 1967 Annual Meeting and further consideration of the comments, compiled section-by-section, on Working Draft No. 4 led to Working Draft No. 5, not publicly distributed but considered by the Committee and its staff in preparing Working Draft No. 6. About 4,000 copies of that draft were distributed. It was considered at length at a public hearing conducted by the Committee in January, 1968. It was further discussed at joint meetings of the Committee and its Advisory Committee and Panels of Advisors on Special Subjects. These discussions and the comments on Working Draft No. 6, compiled section-by-section, led to Working Draft No. 7. That draft was not publicly distributed but provided the basis for the Tentative Final Draft (Working Draft No. 8) which, as noted above, was widely distributed with requests for comments.

Federal Disclosure Legislation

The Congress has passed and the President has approved the Consumer Credit Protection Act (Public Law 90-321; 82 Stat. 146), including as Title I—Consumer Credit Cost Disclosure, the "Truth-in-Lending Act." The Federal Act (§ 123) requires that the Board of Governors of the Federal Reserve System exempt from Federal disclosure requirements "any class of credit transactions within any State

Prefatory Note

if it [the Board] determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter [i.e., Chapter 2—Credit Transactions], and that there is adequate provision for enforcement.”

The Consumer Credit Protection Act consequently presents an unusual opportunity for the early enactment by the States of the Final Draft of the Uniform Consumer Credit Code. The Federal Act requires a complete review, expansion and revision of most States' consumer credit laws. In the view of the Committee it will be far better for the various States to enact a comprehensive Uniform Consumer Credit Code than to tinker with the hodgepodge of existing State consumer credit legislation.

If the Board of Governors of the Federal Reserve System is to exempt from the requirements of the Federal Act the Uniform Consumer Credit Code as enacted by any State, the Code must require at least the disclosures provided for in the Federal Act. This Final Draft attempts to do so.

Plans for Continuation of Consumer Credit Project

Under the rules of the National Conference this Special Committee will be continued for at least two years for, among others, the following purposes.

1. Assisting in enactment of the Uniform Consumer Credit Code by State Legislatures;
2. Considering insertion in the Code of provisions concerning
 - (a) consumer credit counseling agencies,
 - (b) wage earner receiverships; and
 - (c) other appropriate subjects.
3. Receiving suggestions for modification of the Code and, in its judgment, transmitting those suggestions to the National Conference for consideration.
4. Assisting in educational programs regarding consumer credit.

After the discharge of this Special Committee, the National Conference has under consideration the advisability of creating a Permanent Review Board to receive and consider recommended changes in the Consumer Credit Code.

Liaison with the American Bar Association

In accordance with the standard procedures of the National Conference and the American Bar Association, the Committee has consulted with appropriate sections of the American Bar Association, including the Corporation, Banking and Business Law Section and the Section on Administrative Law, as well as with legal organizations affiliated with the American Bar Association, such as the National Legal Aid and Defender Association.

The Advisory Committee and the Panels of Advisors

In conformity to usual National Conference procedures, the Committee has appointed an Advisory Committee representative of affected segments of the public and of the consumer credit industry.

Whatever the Committee's other accomplishments, it has established, perhaps for the first time, a close personal working relationship, a feeling of mutual respect and a rapport between representatives of the two groups.

It is the hope of the Committee that the Council of Advisors to the Administrator proposed in this and prior drafts will continue to expand communication and relationships between representatives of groups having apparently diverse but actually identical interests—the improvement of our society and economy.

The Committee takes this opportunity of expressing its appreciation to its Advisors for their invaluable help and for the almost unlimited time and effort they have devoted to the Committee's project.

The names and addresses of the members of the Advisory Committee and of the various Panels of Advisors follow. [NOTE: The names and addresses are not reproduced.—CCH.]

UNIFORM CONSUMER CREDIT CODE

Table of Contents

Article 1—General Provisions and Definitions

Part 1—Short Title, Construction, General Provisions

SEC.	SUBJECT	CCH ¶
1.101	Short Title	800
1.102	Purposes; Rules of Construction.....	801
1.103	Supplementary General Principles of Law Applicable.....	802
1.104	Construction Against Implicit Repeal.....	803
1.105	Severability	804
1.106	Adjustment of Dollar Amounts.....	805
1.107	Waiver; Agreement to Forego Rights; Settlement of Claims....	806
1.108	Effect of Act on Powers of Organizations	807

Part 2—Scope and Jurisdiction

1.201	Territorial Application	808
1.202	Exclusions	809
1.203	Jurisdiction and Service of Process.....	810

Part 3—Definitions

1.301	General Definitions	811
	(1) "Administrator"	811
	(2) "Agreement"	811
	(3) "Agricultural purpose"	811
	(4) "Closing costs"	811
	(5) "Conspicuous"	811
	(6) "Credit"	811
	(7) "Earnings"	811
	(8) "Lender credit card or similar arrangement".....	811
	(9) "Official fees"	811
	(10) "Organization"	811
	(11) "Payable in instalments".....	811
	(12) "Person"	811
	(13) "Person related to"	811
	(14) "Presumed" or "presumption".....	811
	(15) "Seller credit card"	811
	(16) "Supervised financial organization".....	811
	(17) "United States rule"	811
1.302	Definition: "Federal Consumer Credit Protection Act".....	812
1.303	Index of Definitions in Act.....	813

Article 2—Credit Sales

Part 1—General Provisions

2.101	Short Title	814
2.102	Scope	815
2.103	Definitions in Article.....	816
2.104	Definition: "Consumer Credit Sale".....	817
2.105	Definitions: "Goods"; "Merchandise Certificate"; "Services"; "Sale of Goods"; "Sale of Services"; "Sale of an Interest in Land"; "Precomp'ed"	818