

IN THE SENATE

BY SENATORS RIVERS & Barr

SENATE BILL NO. 113

IN THE LEGISLATURE OF THE TERRITORY OF ALASKA

TWENTY-SECOND SESSION

A BILL

For an Act entitled: "An Act to define, license, and regulate the business of making loans or advancements in the amount or of the value of one thousand dollars or less, secured or unsecured, at a greater rate of interest than unlicensed lenders; prescribing the rates of interest and other charges; providing for the administration of this Act and for the issuance of rules and regulations therefor and enforcement thereof; defining violations and prescribing penalties."

BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF ALASKA:

Section 1. SHORT TITLE. This Act may be cited as the "Alaska Small Loans Act."

Sec. 2. LICENSE REQUIRED. No person, co-partnership, association, or corporation shall engage in the business of making loans of money, credit, goods, or things in action in the amount or of the value of one thousand (\$1,000.00) dollars or less and charge, contract for, or receive on any such loan a greater rate of interest, discount, or consideration therefor than the lender would be permitted by law to charge if he were not a licensee hereunder, except as authorized by this Act and without first obtaining a license from the Auditor of the Territory, hereinafter called the Auditor.

8 **Sec. 3. APPLICATION FOR LICENSE: FEES: ETC.** Application for
9 such license shall be in writing under oath, and in the form pre-
10 scribed by the Auditor, and shall contain the name and the address
11 (both of the residence and place of business) of the applicant,
12 and if the applicant is a co-partnership or association, of every
13 member thereof, and if a corporation, of each officer and director
14 thereof; also the division and municipality with street and number,
15 if any, where the business is to be conducted and such further
16 information as the Auditor may require. Such applicant at the time
17 of making such application shall pay to the Auditor the sum of
18 two hundred (\$200.00) dollars as a fee for investigating the appli-
19 cation and the additional sum of two hundred (\$200.00) dollars as
20 an annual license fee for a period terminating on the last day
21 of the current calendar year; provided, that if the application
22 is filed after June thirtieth in any year such additional sum
23 shall be only one hundred (\$100.00) dollars. In addition to the
24 said annual license fee every licensee hereunder shall pay to
25 the Auditor the actual costs of each examination as provided for
26 in Section 11 of this Act, *(amend) ?*

27 Every applicant shall also prove, in form satisfactory to the
28 Auditor, that he or it has available for the operation of such
29 business at the location specified in the application, liquid
30 assets of at least ten thousand (\$10,000.00) dollars.

31 **Sec. 4. BOND: REQUIREMENT.** The applicant shall also at the
32 same time file with the Auditor a bond to be approved by him in
33 which the applicant shall be the obligor, in the sum of two ^{or less}
34 thousand (\$2,000.00) dollars with one or more sureties whose
35 liability as such sureties need not exceed the said sum in the
36 aggregate. The said bond shall run to the Territory for the use

of the Territory and of any person or persons who may have cause of action against the obligor of said bond under the provisions of this Act. Such bond shall be conditioned that said obligor will faithfully conform to and abide by the provisions of this Act and of all rules and regulations lawfully made by the Auditor hereunder, and will pay to the Territory and to any such person or persons any and all moneys that may become due or owing to the Territory or to such person or persons from said obligor under and by virtue of the provisions of this Act.

Sec. 5. REQUIREMENTS FOR LICENSE. Upon the filing of such application and the payment of such fees and the approval of such bond, if the Auditor shall find upon investigation (a) that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant be a co-partnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this Act, and (b) that allowing such applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, and (c) that the applicant has available for the operation of such business at the specified location liquid assets of at least ten thousand (\$10,000.00) dollars (the foregoing facts being conditions precedent to the issuance of a license under this Act), he shall thereupon issue and deliver a license to the applicant to make loans in accordance with the provisions of this Act at the location specified in the said application, which license shall remain in full force and effect

until it is surrendered by the licensee or revoked or suspended as hereinafter provided; but if the Auditor shall not so find he shall not issue such license and he shall notify the applicant of the denial and return to the applicant the bond and the sum paid by the applicant as a license fee, retaining the two hundred (\$200.00) dollars investigation fee to cover the costs of investigating the application. The Auditor shall approve or deny every application for license hereunder within sixty (60) days from the filing thereof with the said fees and the said approved bond.

If the application is denied, the Auditor shall within twenty (20) days thereafter serve upon the applicant a copy of his written decision and findings, which decision and findings may be appealed from in the manner provided in Section 25 of this Act.

Sec. 6. LICENSE FORM: POSTING THEREOF. Such license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a co-partnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Such license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable.

Sec. 7. ADDITIONAL BOND. If the Auditor shall find at any time that the bond is insecure or exhausted or otherwise doubtful, an additional bond to be approved by him, with one or more sureties and of the character specified in Section 4 of this Act, in the sum of not more than ^{one} two thousand ^(\$2,000.00) dollars, shall be filed by the licensee within ten (10) days after receipt of written demand by the Auditor.

Sec. 8. PLACES OF BUSINESS: CHANGE OF LOCATION. Not more

than one place of business shall be maintained under the same license, but the Auditor may issue more than one license to the same licensee upon compliance with all the provisions of this Act governing an original issuance of a license, for each such new license.

Whenever a licensee shall change his place of business to another location within the same municipality, he shall at once give written notice thereof to the Auditor, who shall attach to the license in writing his record of the change and the date thereof, which shall be authority for the operation of such business under such license at such new location. No change in the place of business of a licensee to a location outside of the original municipality shall be permitted under the same license.

Sec. 9. ANNUAL LICENSE FEE AND NEW BOND. Every licensee shall, on or before the twentieth day of December of each year, pay to the Auditor the sum of two hundred and fifty ^{two} ~~(\$250.00)~~ dollars as an annual license fee for the next succeeding calendar year and shall at the same time file with the Auditor a bond in the same amount and of the same character as required by Section 4 of this Act.

Sec. 10. TERMINATION OF LICENSE: APPEAL FROM REVOCATION OR SUSPENSION: REINSTATEMENT. The Auditor shall, upon ten (10) days' notice to the licensee stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, revoke any license issued hereunder if he shall find that:

(a) The licensee has failed to pay the annual license fee or to maintain in effect the bond or bonds required under the provisions of this Act or to comply with any demand, ruling, or

requirement of the Auditor lawfully made pursuant to and within the authority of this Act; or that

(b) The licensee has violated any provision of this Act or any rule or regulation lawfully made by the Auditor under and within the authority of this Act; or that

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the Auditor in refusing originally to issue such license.

The Auditor may, without notice or hearing, suspend any license for a period not exceeding thirty (30) days, pending investigation.

The Auditor may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist, or, if he shall find that such grounds for revocation or suspension are of general application to all offices, or to more than one office, operated by such licensee, he shall revoke or suspend all of the licenses issued to said licensee or such licenses as such grounds apply to, as the case may be.

Any licensee may surrender any license by delivering to the Auditor written notice that he thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

No revocation or suspension or surrender of any license shall impair or affect the legally enforceable obligation of any pre-existing contract between the licensee and any borrower.

Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked, or

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suspended in accordance with the provisions of this Act, but the Auditor shall have authority at his discretion to reinstate, suspend licenses, or to issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which clearly would have warranted the Auditor in refusing originally to issue such license under this Act.

Whenever the Auditor shall revoke or suspend a license issued pursuant to this Act, he shall forthwith file in the appropriate file in his office a written order to that effect and findings with respect thereto containing the evidence and the reasons supporting the revocation or suspension, and forthwith serve upon the licensee a copy thereof, which order may be appealed from in the manner provided in Section 25 of this Act.

Sec. 11. REPORTS AND EXAMINATIONS. (a) In the administration of this Act the Auditor may require each licensee hereunder to file an annual report in such manner and form as the Auditor specifies.

(b) For the purpose of discovering violations of this Act or securing information lawfully required by him hereunder, the Auditor may at any time, either personally or by a person or persons duly designated by him, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee and of every person, co-partnership, association, and corporation who or which shall be engaged in the business described in Section 2 of this Act, whether such person, co-partnership, association, or corporation shall act or claim to act as principal or agent, or under or without the authority of this Act. For that purpose the Auditor and his duly designated representatives shall have free access to the offices and places

1 of business, books, accounts, papers, records, files, safes, and
2 vaults of all such persons, co-partnerships, associations, and
3 corporations. The Auditor and all persons duly designated by him
4 shall have authority to require the attendance of and to examine
5 under oath all persons whomsoever whose testimony he may require
6 relative to such loans or such business.

7 (c) The Auditor shall make such an examination of the
8 affairs, business, office, and records of each licensee at least
9 once each year. The actual cost of every examination shall be
10 paid to the Auditor by every licensee so examined, and the Auditor
11 may maintain an action for the recovery of such costs in any court
12 of competent jurisdiction, with recourse to the bond or bonds
13 referred to in Secs. 4 and 7 of this Act.

14 Sec. 12. BOOKS AND RECORDS: ANNUAL REPORTS BY LICENSEES.

15 The licensee shall keep and use in his business such books, ac-
16 counts, and records as will enable the Auditor to determine
17 whether such licensee is complying with the provisions of this
18 Act and with the rules and regulations lawfully made by the
19 Auditor hereunder. Every licensee shall preserve such books,
20 accounts, and records, including cards used in the card system, if
21 any, for at least two (2) years after making the final entry on
22 any loan recorded therein.

23 Each licensee shall annually on or before the fifteenth day
24 of March file a report with the Auditor giving such relevant in-
25 formation as the Auditor reasonably may require concerning the
26 business and operations during the preceding calendar year of
27 each licensed place of business conducted by such licensee within
28 the Territory. Such report shall be made under oath and shall be
29 in the form prescribed by the Auditor, who shall keep such reports

1 available as public records.

2 Sec. 13. ADVERTISING: MISLEADING STATEMENTS PROHIBITED:
3 PAPERS SIGNED BY BORROWER: NO CONFESSIONS OF JUDGMENT OR POWERS OF
4 ATTORNEY: WHAT MUST BE CONTAINED THEREIN: NO UNFILLED BLANKS. No
5 licensee or other person, co-partnership, association, or corpora-
6 tion shall advertise, print, display, publish, distribute, or
7 broadcast or cause or permit to be advertised, printed, displayed,
8 published, distributed, or broadcast, in any manner whatsoever
9 any statement or representation with regard to the rates, terms,
10 or conditions for the lending of money, credit, goods, or things
11 in action in the amount or of the value of one thousand (\$1,000.00)
12 dollars or less, which is false, misleading, or deceptive. The
13 Auditor may order any licensee to desist from any conduct which
14 he shall find to be a violation of the foregoing provisions.

15 The Auditor may require that rates of charge, if stated by
16 a licensee, be stated fully and clearly in such manner as he may
17 deem necessary to prevent misunderstanding thereof by prospective
18 borrowers.

19 Sec. 14. USE OF PREMISES RESTRICTED. No licensee shall
20 conduct the business of making loans under this Act within any
21 office, room, or place of business in which any other business
22 is solicited or engaged in, or in association or conjunction
23 therewith, except as may be authorized in writing by the Auditor
24 upon his finding that the character of such other business is
25 such that the granting of such authority would not facilitate
26 evasions of this Act or of the rules and regulations lawfully
27 made hereunder.

28 Sec. 15. TRANSACTIONS LIMITED TO LICENSED PREMISES, ETC.
29 No licensee shall transact such business or make any loan

provided for by this Act under any other name or at any other place of business than that named in the license.

Sec. 16. MAXIMUM INTEREST: LIMITATION OF OTHER CHARGES:

PENALTY. (a) Every licensee hereunder may lend any sum of money not to exceed one thousand (\$1,000.00) dollars and may charge, contract for, and receive thereon interest at a rate not exceeding four (4%) per centum per month on that part of the unpaid principal balance of a loan not in excess of three hundred (\$300.00) dollars; two and one-half per centum (2½%) per month on any remainder of any unpaid principal balance exceeding three hundred (\$300.00) dollars but not exceeding six hundred (\$600.00) dollars, and two (2%) per centum per month on any remainder of any unpaid principal balance exceeding six hundred (\$600.00) dollars but not exceeding one thousand (\$1,000.00) dollars; Provided, however, that on loans, the principal of which is fifty (\$50.00) dollars or less charges at a rate not in excess of five (5%) per centum ^{per month} may be contracted for and received.

(b) No licensee shall induce or permit any borrower to split up or divide any loan. No licensee shall induce or permit any person, nor any husband and wife jointly or severally, to become obligated, directly or contingently or both, under more than one contract of loan at the same time, for the purpose or with the result of obtaining a higher rate of interest than would otherwise be permitted by this section.

(c) Interest shall not be paid, deducted, or received in advance. Interest shall be computed and paid only on unpaid principal balances and shall not be compounded. The maximum interest permitted on loans made under this Act shall be computed on the basis of the number of days actually elapsed and for the

1 purpose of such computations a month shall be any period of thirty
2 (30) consecutive days.

3 (d) In addition to the interest herein provided for, no
4 further or other charge or amount whatsoever for any examination,
5 service, brokerage commission, expense, fee, or bonus or other
6 thing or otherwise shall be directly or indirectly charged, con-
7 tracted for, or received, except: (1) lawful fees actually paid
8 out by the licensee to any public officer for filing, recording,
9 or releasing any instrument securing the loan, or for transferring
10 certificate of title to a motor vehicle securing the loan or noting
11 a lien on such certificate; (2) premiums actually paid out for
12 insurance on the life or pledged property of the borrower; and (3)
13 taxable costs and expenses to which the licensee becomes entitled
14 under general law in any court proceedings either to collect a
15 loan or to realize on a security after default; and (4) a fee of
16 not to exceed \$3.00 for each default. A licensee is permitted
17 to collect the lawful fees and premiums, mentioned in the immedi-
18 ately preceding sentence, either at the time when the loan is made
19 or at any time thereafter. If any interest, consideration or
20 charges in excess of those permitted by this Section are charged,
21 contracted for or received, except as the result of an accidental
22 and bona fide error in computation, the contract of loan shall be
23 deemed modified as follows: all interest, consideration or
24 charges involved shall be voided and a like amount credited to the
25 debtor on the principal of the loan, Provided, that in any case
26 in which the remainder still charged on principal be not suffi-
27 12cient to fully defray such penalty, the difference shall be re-
28 funded by the lender to the borrower.

29 Sec. 17. REQUIREMENTS FOR MAKING AND PAYMENT OF LOANS.

1 Every licensee shall:

2 (a) Deliver to the borrower at the time any loan is
3 made a statement (upon which there shall be printed a copy of
4 Section 16 of this Act) in the English language showing in clear
5 and distinct terms the amount and date of the loan and of its
6 maturity, the nature of the security, if any, for the loan, the
7 name and address of the borrower and of the licensee, and the
8 agreed rate of charge;

9 (b) Give to the borrower a plain and complete receipt
10 for all payments made on account of any such loan at the time
11 such payments are made, specifying the amount applied to interest
12 and the amount, if any, applied to principal, and stating the un-
13 paid principal balance, if any, of such loan;

14 (c) Permit payment to be made in advance in any amount
15 on any contract of loan at any time, but the licensee may apply
16 such payment first to all interest in full at the agreed rate up
17 to the date of such payment;

18 (d) Upon repayment of the loan in full, mark indelibly
19 every obligation and security signed by the borrower with the
20 word "Paid" or "Cancelled," and release any mortgage, restore any
21 pledge, cancel and return any note, and cancel and return any
22 assignment given to the licensee by the borrower;

23 (e) Display prominently in each licensed place of
24 business a full and accurate schedule, to be approved by the
25 Auditor, of the charges to be made and the method of computing the
26 same.

27 Sec. 18. MAXIMUM CHARGE BY LICENSEE: CONTINGENT LIABILITIES
28 INCLUDED. No licensee shall directly or indirectly charge, con-
29 tract for, or receive any interest, discount, or consideration
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1 greater than the lender would be permitted by law to charge if he
2 were not a licensee hereunder, upon the loan, use or forbearance
3 of money, goods, or things in action, or upon the loan, use, or
4 sale of credit, of the amount or value of more than one thousand
5 (\$1,000.00) dollars. The foregoing prohibition shall also apply
6 to any licensee who permits any person, as borrower or as endorser,
7 guarantor, or surety for any borrower, or otherwise, to owe
8 directly or contingently or both to the licensee at any time a
9 sum of more than one thousand (\$1,000.00) dollars on principal.

10 Sec. 19. PURCHASE OF WAGES FOR \$1,000.00 OR LESS. The
11 payment of one thousand (\$1,000.00) dollars or less in money,
12 credit, goods, or things in action, as consideration for any sale
13 or assignment of, or order for, the payment of wages, salary,
14 commissions, or other compensation for services, whether earned
15 or to be earned, shall for the purposes of regulation under this
16 Act be deemed interest or charges upon such loan from the date of
17 such payment to the date such compensation is payable. Such
18 transaction shall be governed by and subject to the provisions of
19 this Act.

20 Sec. 20. MAXIMUM CHARGES BY NON-LICENSEE ON LOANS. (a) No
21 person, co-partnership, or corporation, except as authorized by
22 this Act, shall directly or indirectly charge, contract for, or
23 receive any interest, discount, or consideration greater than the
24 lender would be permitted by law to charge if he were not a
25 licensee hereunder, upon the loan, use, or forbearance of money,
26 goods, or things in action, or upon the loan, use, or sale of
27 credit of the amount or value of one thousand (\$1,000.00) dollars
28 or less.

29 (b) The foregoing prohibition shall apply to any person.

1 co-partnership, association or corporation who or which, by any
2 device, subterfuge or pretense whatsoever shall charge, contract
3 for or receive greater interest, consideration or charges than is
4 authorized by this chapter for any such loan, use or forbearance
5 of money, goods or things in action or for any such loan, use or
6 sale of credit.

7 (c) No loan of the amount or value of one thousand
8 (\$1,000.00) dollars or less for which a greater rate of interest,
9 consideration or charges than is permitted by this ^{act} chapter has
10 been charged, contracted for or received, wherever made, shall be
11 enforced in the Territory, and every person in anywise partici-
12 pating therein in the Territory shall be subject to the provisions
13 of this chapter; provided that the foregoing shall not apply to
14 loans legally made in any state or other territory which then has
15 in effect a regulatory small loan law similar in principle to
16 this chapter.

17 Sec. 21. CRIMINAL PENALTIES. Any person, co-partnership,
18 association, or corporation and the several members, officers,
19 directors, agents, and employees thereof, who shall violate or
20 participate in a violation of any of the provisions of Sections
21 2, 12, 13, 16, 17 or 20 of this Act, shall be guilty of a mis-
22 demeanor.

23 Sec. 22. EXEMPTIONS. This Act shall not apply to any per-
24 son, co-partnership, association, or corporation doing business
25 under and as permitted by any law of this Territory or of the
26 United States relating to banks, savings banks, trust companies,
27 building and loan associations, credit unions, or licensed pawn-
28 brokers.

29 Sec. 23. RULES, REGULATIONS, FINDINGS, AND ORDERS BY AUDITOR.

1 SERVICE OF NOTICES. (a) The Auditor is hereby authorized and
2 empowered to make such general rules and regulations and such
3 specific rulings, demands, and findings consistent with this Act
4 as may be necessary for the proper conduct of such business and
5 the enforcement of this Act.

6 (b) All notices required or authorized by this Act to
7 be given or served by the Auditor may be given or served by
8 registered mail and service thereof shall be deemed complete when
9 a true copy thereof is deposited in the post office properly
10 addressed and stamped.

11 Sec. 24. AMENDMENT OR REPEAL OF ACT: NOT TO IMPAIR OBLIGA-
12 TIONS OF THEN EXISTING CONTRACTS. This Act or any part thereof
13 may be modified, amended, or repealed so as to effect a cancel-
14 lation or alteration of any license or right of a licensee here-
15 under, provided that such cancellation or alteration shall not
16 impair or affect the obligation of any pre-existing lawful con-
17 tract between any licensee and any borrower.

18 Sec. 25. APPEALS. Whenever the Auditor shall deny an appli-
19 cation for a license or shall revoke or suspend a license issued
20 pursuant to this Act, or shall issue any specific order or demand,
21 then such applicant or licensee thereby affected may, within
22 thirty (30) days from the date of service of notice as provided
23 for in this Act, appeal to the U. S. District Court for the
24 District of Alaska. The appeal shall be perfected by serving a
25 copy of the notice of appeal with an affidavit stating the grounds
26 of appeal, upon the Auditor and by filing it, together with proof
27 of service, with the Clerk of the U. S. District Court in the
28 Division wherein the appeal is taken. Thereupon the Auditor shall,
29 within fifteen (15) days after service of such notice of appeal,

1 make and certify a transcript of the evidence and of all the
2 records and papers on file in his office relating to the order
3 appealed from, and the Auditor shall forthwith file the same in
4 the office of the Clerk of said District Court. The Clerk of the
5 Court shall then promptly notify the appellant of the filing of
6 said transcript. Either party may file supplemental pleadings
7 prior to trial. A trial shall be had in said District Court de
8 novo. The applicant or licensee, as the case may be, shall be
9 deemed the plaintiff and the Territory of Alaska the defendant.
10 Each party shall be entitled to subpoena witnesses and produce
11 evidence to sustain or reverse the findings and order or demand
12 of the Auditor. During the pendency of any appeal from the order
13 of revocation or suspension of a license, the order of revocation
14 theretofore entered by the Auditor shall be stayed and any other
15 order or demand appealed from may be stayed in the discretion of
16 the Court. Either party may appeal from the judgment of said
17 District Court to the U. S. Circuit Court of Appeals for the
18 Ninth Circuit, as in other civil actions.