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OFFICIAL BUSINESS

ALASKA STATE LEGISLATURE - SENATE

COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON
CHAIRMAN

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MEMORANDUM

TO: Senator Bill Ray, Chair
Senate Judiciary Committee

FROM: Senator Dick Eliason *Dick*

RE: SB 360 - "An Act relating to checking accounts"

DATE: April 18, 1984

The Senate Labor and Commerce Committee recently held two hearings on SB 360 - "An Act relating to checking accounts". Two distinct versions of this legislation were considered by the Committee. In both instances the banking community opposed sections of SB 360. However, this does not mean the bankers are against legislation which addresses the problem of "bad check" writers. On the contrary, the Alaska Bankers Association supports the intent and objectives of this legislation.

The original version of SB 360 was based on legislation enacted by the State of Minnesota. This version required the banks to verify an applicant's financial stability before a checking account could be opened. As there is no central data base where an applicant's financial history is recorded, representatives from the banks testified that it would be virtually impossible to accurately and efficiently verify the applicant's information before opening a checking account.

The main objections to a committee substitute drafted by the Senate Labor and Commerce Committee centered on the requirement that a photo ID be a requirement for opening a checking account and the stipulation that each check indicate when the account was opened. Testimony indicated that the absolute requirement for a photo ID may be a potential hardship for bush area customers where some people do not have drivers' licenses.

The stipulation that banks print checks indicating the date in which the account was established would prove unenforceable according to a bank representative. If a customer objects strongly to this requirement, the checks could be printed by any publishing house.

In summary, in recognition of the problem stemming from "bad check" writers, I offer a committee substitute based on legislation recently enacted by California. The major thrust of this version is to increase the civil penalties for writing a NSF check.

The various versions of SB 360 are attached for your consideration.

CSSB 360 (L&C)

SECTIONAL ANALYSIS

Section 1

- a) Before opening a checking account, the applicant must provide identifiable information, including a driver's license or another identifying document which includes the applicant's photograph.
- b) The applicant who falsifies the information is guilty of a class B misdemeanor.
- c) A bank may not authorize the checking account if the applicant cannot provide "photo ID". If the applicant is a minor, the parent/ guardian can provide identification.

The bank can waive this requirement if the applicant has had another type of account with the bank for at least a year.

- d) The bank shall print checks indicating the month and year the account was opened. If the applicant had a checking account for 2 years or more within 5 years of the date of the new request, the bank can print the month and year of the earlier account.
- e) These requirements, except as provided in (c) of this section, do not limit the bank's discretion whether to grant or deny the application.

Section 06.55.020

- a) A person who issues a bad check and who fails to pay the amount of the check within 30 days after receiving a written demand for payment is liable for the amount of the check plus 3 times the check value. The damages, exclusive of the amount of the check, may not be less than \$100 or more than \$500.
- b) The check is prima facie evidence if the payee records identifying information on the check and verifies the information against a photo ID.

Section 06.55.500

This section lists a variety of definitions. "Financial institution" is defined as a "bank, savings and loan association, credit union, or other business association authorized to offer transaction accounts in the state.

Re: SB360

Linda Brink - 789-0098 - Credit Bureau
(Check Rite Service - maintain list)

Interior Credit Bureau - Fbxs - parent group

Ms Onlie Wallace - 272-5551 ext 212
NBA - Visa Mastercharge re: check
guarantee program

AN ACT

225

SB 360 is
based on the
Minnesota
law

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Secretary of the SENATE
Room 231, State Capitol
St. Paul, 296-2343

1

2 relating to commerce; establishing standards and
3 procedures for the release of financial information;
4 establishing procedures for opening checking accounts;
5 providing for civil liability for issuance of
6 dishonored checks; clarifying conciliation court
7 jurisdiction for actions on dishonored checks;
8 requiring release of certain account information to
9 check holders and law enforcement authorities;
10 amending Minnesota Statutes 1982, sections 487.30,
11 subdivision 4; 488A.12, subdivision 3; 488A.29,
12 subdivision 3; and 609.535; proposing new law coded in
13 Minnesota Statutes, chapters 48 and 332; proposing new
14 law coded as Minnesota Statutes, chapter 13A;
15 repealing Minnesota Statutes 1982, section 48.511.

16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

18 Section 1. [13A.01] [DEFINITIONS.]

19 Subdivision 1. [SCOPE.] For the purpose of this chapter,
20 the following terms have the meanings given them.

21 Subd. 2. [FINANCIAL INSTITUTION.] "Financial institution"
22 means any office of a bank, savings bank, industrial loan
23 company, trust company, savings and loan, building and loan,
24 credit union, or consumer finance institution, located in the
25 state.

26 Subd. 3. [FINANCIAL RECORD.] "Financial record" means an
27 original of, a copy of, or information known to have been
28 derived from, any record held by a financial institution
29 pertaining to a customer's relationship with the financial
30 institution.

1 Subd. 4. [GOVERNMENT AUTHORITY.] "Government authority"
 2 -----
 3 means any agency or department of the state or a local unit of
 4 -----
 5 government, or any officer, employee, or agent of it.
 6 -----

7 Subd. 5. [CUSTOMER.] "Customer" means any natural person
 8 -----
 9 or authorized representative of that person who utilized or is
 10 -----
 11 utilizing any service of a financial institution, or for whom a
 12 -----
 13 financial institution is acting or has acted as a fiduciary, in
 14 -----
 15 relation to an account maintained in the person's name.
 16 -----

17 Subd. 6. [LAW ENFORCEMENT INQUIRY.] "Law enforcement
 18 -----
 19 inquiry" means a lawful investigation or official proceeding
 20 -----
 21 inquiring into a violation of, or failure to comply with, any
 22 -----
 23 criminal or civil statute or any rule or order issued pursuant
 24 -----
 25 to it.
 26 -----

27 Sec. 2. [13A.02] [ACCESS TO FINANCIAL RECORDS BY
 28 -----
 29 GOVERNMENT AUTHORITIES PROHIBITED.]

30 Subdivision 1. [ACCESS BY GOVERNMENT.] Except as
 31 -----
 32 authorized by this chapter, no government authority may have
 33 -----
 34 access to, or obtain copies of, or the information contained in,
 35 -----
 36 the financial records of any customer from a financial
 37 -----
 38 institution unless the financial records are reasonably
 39 -----
 40 described and:
 41 -----

42 (1) The customer has authorized the disclosure;
 43 -----

44 (2) The financial records are disclosed in response to a
 45 -----
 46 search warrant;
 47 -----

48 (3) The financial records are disclosed in response to a
 49 -----
 50 judicial or administrative subpoena; or
 51 -----

52 (4) The financial records are disclosed pursuant to section
 53 -----
 54 609.535 or other statute or rule.
 55 -----

56 Subd. 2. [RELEASE PROHIBITED.] No financial institution,
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 58 or officer, employee, or agent of a financial institution, may
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 60 provide to any government authority access to, or copies of, or
 61 -----
 62 the information contained in, the financial records of any
 63 -----
 64 customer except in accordance with the provisions of this
 65 -----
 66 chapter.
 67 -----

68 Nothing in this chapter shall require a financial
 69 -----
 70 institution to inquire or determine that those seeking
 71 -----

1 disclosure have duly complied with the requirements of this
 2 chapter, provided only that the customer authorization, search
 3 warrant, subpoena, or written certification pursuant to section
 4 609.535, subdivision 6, or other statute or rule, served on or
 5 delivered to a financial institution shows compliance on its
 6 face.

7 Subd. 3. [NOTICE TO CUSTOMER.] Within 180 days after a
 8 government authority obtains access to the financial records of
 9 a customer pursuant to a search warrant or a judicial or
 10 administrative subpoena, it shall notify the customer of its
 11 action unless a delay of notice is obtained pursuant to section
 12 3. The notice shall be sufficient to inform the customer of the
 13 name of the government authority or government authorities
 14 having had access to the records, the financial records to which
 15 access was obtained, and the purpose of the law enforcement
 16 inquiry, including transfers of financial records made pursuant
 17 to subdivision 5. Notice may be given by providing the customer
 18 with a copy of the search warrant or subpoena.

19 Subd. 4. [DUTY OF FINANCIAL INSTITUTIONS.] Upon receipt of
 20 a request for financial records made by a government authority,
 21 the financial institution shall, unless otherwise provided by
 22 law, proceed to assemble the records requested within a
 23 reasonable time and be prepared to deliver the records to the
 24 government authority upon receipt of the search warrant or
 25 subpoena required under this section.

26 Subd. 5. [USE OF INFORMATION.] Financial records
 27 originally obtained pursuant to this chapter may be transferred
 28 to another government authority provided the transferred records
 29 are pertinent and necessary to the receiving authority in
 30 initiating, furthering, or completing a law enforcement inquiry.

31 When financial records subject to this chapter are
 32 transferred to another government authority, the transferring
 33 authority shall include the name of the receiving authority and
 34 the financial records transferred in the notice required by
 35 subdivision 3 of this section or, if the transfer occurs after
 36 the notice has been sent to the customer, the transferring

1 authority shall, upon written request by the customer, inform
 2 the customer of the name of the government authority to which
 3 the financial records were transferred.

4 Subd. 6. [STATUS OF RECORDS.] All financial records
 5 obtained by a government authority pursuant to this section are
 6 subject to the provisions of section 13.82, subdivision 5.

7 Sec. 3. [13A.03] [DELAYED NOTICE.]

8 Subdivision 1. [APPLICATION.] Upon application of the
 9 government authority, a customer notice pursuant to section 2,
 10 subdivision 3, may be delayed by order of an appropriate court
 11 if the judge finds that:

12 (1) The law enforcement inquiry being conducted is within
 13 the lawful jurisdiction of the government authority seeking the
 14 financial records;

15 (2) There is reason to believe that the records being
 16 sought are relevant to a legitimate law enforcement inquiry; and

17 (3) There is reason to believe that the notice will result
 18 in (i) endangering life or physical safety of any person; (ii)
 19 flight from prosecution; (iii) destruction of or tampering with
 20 evidence; (iv) intimidation of potential witnesses; or (v)
 21 otherwise seriously jeopardizing an investigation or official
 22 proceeding or unduly delaying a trial or ongoing official
 23 proceeding.

24 An application for delay must be made with reasonable
 25 specificity.

26 Subd. 2. [ORDER.] If the court makes the findings required
 27 in subdivision 1, it shall enter an ex parte order granting the
 28 requested delay for a period not to exceed 180 days and an order
 29 prohibiting the financial institution from disclosing that
 30 records have been obtained. If the court finds that there is
 31 reason to believe that the notice may endanger the life or
 32 physical safety of any person, the court may specify that the
 33 delay be indefinite.

34 Extensions of the delay of notice of up to 90 days each may
 35 be granted by the court upon application.

36 Subd. 3. [NOTICE.] Upon expiration of the period of delay

1 of notification under this section, the customer shall be served
2 with a copy of the notice required by section 2, subdivision 3.

3 Sec. 4. [13A.04] [EXCEPTIONS.]

4 Subdivision 1. [STATUTORY VIOLATIONS.] Nothing in this
5 chapter precludes any financial institution, or any officer,
6 employee, or agent of a financial institution, from notifying a
7 government authority that the institution, or officer, employee,
8 or agent has information which may be relevant to a possible
9 violation of any statute or rule and providing access to
10 financial records relevant to the possible violation.

11 Subd. 2. [RELEASE INCIDENT TO ANOTHER PROCEEDING.] Nothing
12 in this chapter precludes a financial institution, as an
13 incident to perfecting a security interest, proving a claim in
14 bankruptcy, or otherwise collecting on a debt owing either to
15 the financial institution itself or in its role as a fiduciary,
16 from providing copies of any financial record to any court or
17 government authority.

18 Subd. 3. [GOVERNMENT ASSISTANCE PROGRAMS.] Nothing in this
19 chapter precludes a financial institution, as an incident to
20 processing an application for assistance to a customer in the
21 form of a government loan, loan guaranty, or loan insurance
22 agreement, or as an incident to processing a default on, or
23 administering a government guaranteed or insured loan, from
24 providing access to an appropriate government authority with any
25 financial record necessary to permit the authority to carry out
26 its responsibilities under a loan, loan guaranty, or loan
27 insurance agreement.

28 Whenever a customer applies for participation in a
29 government loan, loan guaranty, or loan insurance program, the
30 government authority administering the program shall give the
31 customer written notice of the authority's access rights under
32 this subdivision. No further notification shall be required for
33 subsequent access by that authority during the term of the loan,
34 loan guaranty, or loan insurance agreement.

35 Financial records obtained pursuant to this subdivision may
36 be used only for the purpose for which they were originally

1 obtained.

2 Subd. 4. [OTHER EXCEPTIONS.] Nothing in this chapter:

3 (a) Prohibits the disclosure of any financial records or

4 information which is not identified with or identifiable as

5 being derived from the financial records of a particular

6 customer;

7 (b) Prohibits examination by or disclosure to the

8 commissioner of banks of financial records or information in the

9 exercise of his supervisory, regulatory, or monetary functions

10 with respect to a financial institution;

11 (c) Shall apply when financial records are sought by a

12 government authority under the rules of civil or criminal

13 procedure in connection with litigation to which the government

14 authority and the customer are parties;

15 (d) Shall apply when financial records are sought by a

16 government authority in connection with a lawful proceeding,

17 investigation, examination, or inspection directed at the

18 financial institution in possession of the records or at a legal

19 entity which is not a customer;

20 (e) Shall apply to any subpoena or court order issued in

21 connection with proceedings before a grand jury;

22 (f) Shall apply to subpoenas issued in civil cases pursuant

23 to the rules of civil procedure; or

24 (g) Shall apply when a government authority is seeking only

25 the name, address, account number, and type of account of any

26 customer or ascertainable group of customers associated with a

27 financial transaction or class of financial transaction.

28 Sec. 5. [48.512] [PROCEDURES FOR OPENING CHECKING
29 ACCOUNTS.]

30 Subdivision 1. [DEFINITIONS.] For the purpose of this

31 section the following terms have the meanings given:

32 (a) "Financial intermediary" means any person doing

33 business in this state who offers transaction accounts to the

34 public.

35 (b) "Transaction account" means a deposit or account

36 established and maintained by a natural person or persons under

1 an individual or business name for personal, household, or
 2 business purposes, on which the depositor or account holder is
 3 permitted to make withdrawals by negotiable or transferable
 4 instruments, payment orders of withdrawal, or other similar
 5 device for the purpose of making payments or transfers to third
 6 persons or others, including demand deposits or accounts subject
 7 to check, draft, negotiable order of withdrawal, share draft, or
 8 other similar item. A transaction account does not include the
 9 deposit or account of a partnership having more than three
 10 partners, the personal representative of an estate, the trustee
 11 of a trust or a limited partnership.

12 Subd. 2. [REQUIRED INFORMATION.] Before opening or
 13 authorizing signat y power over a transaction account, a
 14 financial intermediary shall require one applicant to provide
 15 the following information on an application document signed by
 16 the applicant:

- 17 (a) full name;
- 18 (b) birth date;
- 19 (c) address of residence;
- 20 (d) address of current employment, if employed;
- 21 (e) telephone numbers of residence and place of employment,
- 22 if any;

- 23 (f) social security number;
- 24 (g) driver's license or identification card number issued
 25 pursuant to section 171.07. If the applicant does not have a
 26 driver's license or identification card, the applicant may
 27 provide an identification document number issued for
 28 identification purposes by any state, federal, or foreign
 29 government if the document includes the applicant's photograph,
 30 full name, birth date, and signature;

- 31 (h) whether the applicant has had a transaction account at
 32 the same or another financial intermediary within 12 months
 33 immediately preceding the application, and, if so, the name of
 34 the financial intermediary;

- 35 (i) whether the applicant has had a transaction account
 36 closed by a financial intermediary without the applicant's

1 consent within 12 months immediately preceding the application,
2 and, if so, the reason the account was closed; and

3 (j) whether the applicant has been convicted of a criminal
4 offense because of the use of a check or other similar item
5 within 24 months immediately preceding the application.

6 A financial intermediary may require an applicant to
7 disclose additional information.

8 An applicant who makes a false material statement that he
9 does not believe to be true in an application document with
10 respect to information required to be provided by this
11 subdivision is guilty of perjury. The financial intermediary
12 shall notify the applicant of the provisions of this paragraph.

13 Subd. 3. [CONFIRM NO INVOLUNTARY CLOSING.] Before opening
14 or authorizing signatory power over a transaction account, the
15 financial intermediary shall attempt to verify the information
16 disclosed for subdivision 2, clause (i). The financial
17 intermediary may not open or authorize signatory power over a
18 transaction account if (i) the applicant had a transaction
19 account closed by a financial intermediary without his consent
20 because of his issuance of dishonored checks within 12 months
21 immediately preceding the application, or (ii) the applicant has
22 been convicted of a criminal offense because of the use of a
23 check or other similar item within 24 months immediately
24 preceding the application.

25 If the transaction account is refused, the reasons for the
26 refusal shall be given to the applicant in writing.

27 Subd. 4. [IDENTIFICATION IS REQUIRED.] A financial
28 intermediary shall not open or authorize signatory power over a
29 transaction account if none of the applicants provides a
30 driver's license, identification card, or identification
31 document as required by subdivision 2. When a minor is the
32 applicant and the minor does not have a driver's license or
33 identification card issued pursuant to section 171.07, the
34 identification requirements of subdivision 2, clause (g), and
35 this subdivision are satisfied if the minor's parent or guardian
36 provides identification of his own that meets the identification

1 requirement. The financial intermediary may waive the
 2 identification requirement if the applicant has had another type
 3 of account with the financial intermediary for at least one year
 4 immediately preceding the time of application.

5 Subd. 5. [NO LIABILITY.] The requirements of this section
 6 do not impose any liability on financial intermediaries offering
 7 transaction accounts or, except as provided in subdivisions 3
 8 and 4, limit a financial intermediary's discretion as to whether
 9 to grant or deny an application subject to this section.

10 [WORTHLESS CHECK COLLECTIONS]

11 Sec. 6. [332.50] [CIVIL LIABILITY FOR ISSUANCE OF
 12 WORTHLESS CHECK.]

13 Subdivision 1. [DEFINITIONS.] "Check" means a check,
 14 draft, order of withdrawal, or similar negotiable or
 15 nonnegotiable instrument.

16 "Credit" means an arrangement or understanding with the
 17 drawee for the payment of the check.

18 Subd. 2. [ACTS CONSTITUTING.] Whoever issues any check
 19 that is dishonored and is not paid within 30 days after mailing
 20 a notice of dishonor and a copy of sections 6 and 609.535 in
 21 compliance with subdivision 3, is liable to the holder for the
 22 amount of the check plus a civil penalty of up to \$100, interest
 23 at the rate payable on judgments pursuant to section 549.09 on
 24 the face amount of the check from the date of dishonor,
 25 reasonable attorney fees if the amount of the check is over
 26 \$1,250, and a service charge not exceeding \$15 if written notice
 27 of the service charge was conspicuously displayed on the
 28 premises when the check was issued.

29 This subdivision prevails over any provision of law
 30 limiting, prohibiting, or otherwise regulating service charges
 31 authorized by this subdivision.

32 Subd. 3. [NOTICE OF DISHONOR REQUIRED.] Notice of
 33 nonpayment or dishonor and a copy of sections 6 and 609.535
 34 shall be sent by the payee or holder of the check to the drawer
 35 by certified mail, return receipt requested, or by regular mail,
 36 supported by an affidavit of service by mailing, to the address

1 printed or written on the check. The issuance of a check with
 2 an address printed or written on it is a representation by the
 3 drawer that the address is the correct address for receipt of
 4 mail concerning the check. Failure of the drawer to receive a
 5 regular or certified mail notice sent to that address is not a
 6 defense to liability under this section, if the drawer has had
 7 actual notice for 30 days that the check has been dishonored.

8 An affidavit of service by mailing shall be retained by the
 9 payee or holder of the check.

10 Subd. 4. [PROOF OF IDENTITY.] The check is prima facie
 11 evidence of the identity of the drawer if the person receiving
 12 the check:

13 (a) records the following information about the drawer on
 14 the check, unless it is printed on the face of the check:

15 (1) name;

16 (2) home or work address;

17 (3) home or work telephone number; and

18 (4) identification number issued pursuant to section 171.07;

19 (b) compares the drawer's physical appearance, signature,
 20 and the personal information recorded on the check with the
 21 drawer's identification card issued pursuant to section 171.07;
 22 and

23 (c) initials the check to indicate compliance with these
 24 requirements.

25 Subd. 5. [DEFENSES.] Any defense otherwise available to
 26 the drawer also applies to liability under this section.

27 Sec. 7. Minnesota Statutes 1982, section 487.30,
 28 subdivision 4, is amended to read:

29 Subd. 4. [JURISDICTION; WORTHLESS DISHONORED CHECKS.] The
 30 conciliation court has jurisdiction to determine a civil action
 31 commenced by a plaintiff, resident of the county, to recover the
 32 amount of a worthless dishonored check issued in the county
 33 within the meaning of section 609.535, notwithstanding that even
 34 though the defendant or defendants are not residents of the
 35 county provided that, if the notice of nonpayment or dishonor
 36 required by described in section 609.535, subdivision 3, is sent

1 to the maker or drawer as specified therein and the notice
 2 states that the payee or holder of the check or other order of
 3 payment of money may commence a conciliation court action in the
 4 county where the worthless dishonored check was issued to
 5 recover the amount of the check. This subdivision does not
 6 apply to a check or other order for payment of money that has
 7 been dishonored by a stop payment order. Notwithstanding any
 8 law or rule of civil procedure to the contrary, the summons in
 9 any action commenced under this subdivision may be served
 10 anywhere within the state of Minnesota. The conciliation court
 11 clerk shall attach a copy of the dishonored check or other order
 12 for payment of money to the summons before it is issued.

13 Sec. 8. Minnesota Statutes 1982, section 488A.12,
 14 subdivision 3, is amended to read:

15 Subd. 3. [JURISDICTION.] (a) Excepting actions involving
 16 title to real estate, the court has jurisdiction to hear,
 17 conciliate, try, and determine civil actions at law where the
 18 amount in controversy does not exceed the sum of \$1,250. The
 19 territorial jurisdiction of the court is coextensive with the
 20 geographic boundaries of the county of Hennepin.

21 (b) Notwithstanding the provisions of clause paragraph (a),
 22 or any rule of court to the contrary, the conciliation court of
 23 Hennepin county has jurisdiction to determine an action brought
 24 pursuant to section 504.20 for the recovery of a deposit on
 25 rental property located in whole or in part in Hennepin county,
 26 and the summons in the action may be served anywhere within the
 27 state of Minnesota.

28 (c) Notwithstanding the provisions of clause paragraph (a),
 29 or any rule of court to the contrary, the conciliation court of
 30 Hennepin county has jurisdiction to determine a civil action
 31 commenced by a plaintiff, a resident of Hennepin county, to
 32 recover the amount of a worthless dishonored check issued in the
 33 county within the meaning of section 609.535, notwithstanding
 34 that even though the defendant or defendants are not residents
 35 of Hennepin county provided that, if the notice of nonpayment or
 36 dishonor required by described in section 609.535, subdivision

1 3, is sent to the maker or drawer as specified therein and the
 2 notice states that the payee or holder of the check or other
 3 order of payment of money may commence a conciliation court
 4 action in the county where the worthless dishonored check was
 5 issued to recover the amount of the check. This clause does not
 6 apply to a check or other order for payment of money that has
 7 been dishonored by a stop payment order. Notwithstanding any
 8 law or rule of civil procedure to the contrary, the summons in
 9 any action commenced under this clause may be served anywhere
 10 within the state of Minnesota. The conciliation court
 11 administrator shall attach a copy of the dishonored check or
 12 other order for payment of money to the summons before it is
 13 issued.

14 Sec. 9. Minnesota Statutes 1982, section 488A.29,
 15 subdivision 3, is amended to read:

16 Subd. 3. [JURISDICTION.] (a) Excepting actions involving
 17 title to real estate, the court has jurisdiction to hear,
 18 conciliate, try and determine civil actions at law where the
 19 amount in controversy does not exceed the sum of \$1,250. The
 20 territorial jurisdiction of the court is coextensive with the
 21 geographic boundaries of the county of Ramsey.

22 (b) Notwithstanding the provisions of clause paragraph (a)
 23 or any rule of court to the contrary, the conciliation court of
 24 Ramsey county has jurisdiction to determine an action brought
 25 pursuant to section 504.20 for the recovery of a deposit on
 26 rental property located in whole or in part in Ramsey county,
 27 and the summons in the action may be served anywhere in the
 28 state of Minnesota.

29 (c) Notwithstanding the provisions of clause paragraph (a)
 30 or any rule of court to the contrary, the conciliation court of
 31 Ramsey county has jurisdiction to determine a civil action
 32 commenced by a plaintiff, resident of Ramsey county, to recover
 33 the amount of a worthless dishonored check issued in the county
 34 within the meaning of section 609-535, notwithstanding that even
 35 though the defendant or defendants are not residents of Ramsey
 36 county provided that, if the notice of nonpayment or dishonor

1 required by described in section 609.535, subdivision 3, is sent
 2 to the maker or drawer as specified therein and the notice
 3 states that the payee or holder of the check or other order or
 4 payments of money may commence a conciliation court action in the
 5 county where the worthless dishonored check was issued to
 6 recover the amount of the check. This clause does not apply to
 7 a check or other order for the payment of money that has been
 8 dishonored by a stop payment order. Notwithstanding any law or
 9 rule of civil procedure to the contrary, the summons in any
 10 action commenced under this clause may be served anywhere within
 11 the state of Minnesota. The conciliation court administrator
 12 shall attach a copy of the dishonored check or other order for
 13 payment of money to the summons before it is issued.

14 Sec. 10. Minnesota Statutes 1982, section 609.535, is
 15 amended to read:

16 609.535 [ISSUANCE OF WORTHLESS DISHONORED CHECKS.]

17 Subdivision 1. [DEFINITION DEFINITIONS.] For the purpose
 18 of this section, the following terms have the meanings given
 19 them.

20 (a) "Check" means a check, draft, order of withdrawal, or
 21 similar negotiable or nonnegotiable instrument.

22 (b) "Credit" means an arrangement or understanding with the
 23 drawee for the payment of the a check or other order for the
 24 payment of money to which this section applies.

25 Subd. 2. [ACTS CONSTITUTING.] Whoever issues any a check
 26 or other order for the payment of money which, at the time of
 27 issuance, he intends shall not be paid, is guilty of a
 28 misdemeanor. In addition, restitution may be ordered by the
 29 court.

30 Subd. 3. [PROOF OF INTENT.] Any of the following is
 31 evidence sufficient to sustain a finding that the person at the
 32 time he issued the check or other order for the payment of
 33 money, intended it should not be paid:

34 (1) Proof that, at the time of issuance, he did not have an
 35 account with the drawee; or

36 (2) Proof that, at the time of issuance, he did not have

1 sufficient funds or credit with the drawee and that he failed to
 2 pay the check or other order within five business days after
 3 mailing of notice of nonpayment or dishonor as provided in this
 4 subdivision; or

5 (3) Proof that, when presentment was made within a
 6 reasonable time, the issuer did not have sufficient funds or
 7 credit with the drawee and that he failed to pay the check or
 8 other order within five business days after mailing of notice of
 9 nonpayment or dishonor as provided in this subdivision.

10 Notice of nonpayment or dishonor and a copy of this section
 11 shall be sent by the payee or holder of the check to the maker
 12 or drawer by certified mail, return receipt requested, or by
 13 regular mail, supported by an affidavit of service by mailing,
 14 to the address printed on the check. Refusal by the maker or
 15 drawer of the check to accept certified mail notice or failure
 16 to claim certified or regular mail notice shall is not
 17 constitute a defense that notice was not received.

18 The notice may state that unless the check is paid in full
 19 within five business days after mailing of the notice of
 20 non-payment nonpayment or dishonor, the payee or holder of the
 21 check or other order for the payment of money will or may refer
 22 the matter to proper authorities for prosecution under this
 23 section.

24 An affidavit of service by mailing shall be retained by the
 25 payee or holder of the check.

26 Subd. 4. [PROOF OF LACK OF FUNDS OR CREDIT.] If the check
 27 or other order for the payment of money has been protested, the
 28 notice of protest thereof is admissible as proof of
 29 presentation, nonpayment, and protest, and is evidence
 30 sufficient to sustain a finding that there was a lack of funds
 31 or credit with the drawee.

32 Subd. 5. [EXCEPTIONS.] This section does not apply to a
 33 postdated check or to a check given for a past consideration,
 34 except a payroll check or a check issued to a fund for employee
 35 benefits.

36 Subd. 6. [RELEASE OF ACCOUNT INFORMATION TO LAW

1 ENFORCEMENT AUTHORITIES.] A drawee shall not be liable in a
 2 civil or criminal proceeding for releasing release the
 3 information specified below to any state, county, or local law
 4 enforcement or prosecuting authority which first certifies in
 5 writing that it is investigating or prosecuting a complaint
 6 against the drawer under this section or section 609.52,
 7 subdivision 2, clause (3)(a), and that 15 days have elapsed
 8 since the mailing of the notice of dishonor required by
 9 subdivisions subdivisions 3 and 8. This subdivision applies to
 10 the following information relating to the drawer's account:

11 (1) Documents relating to the opening of the account by the
 12 drawer;

13 (2) Correspondence between the drawer and the drawee
 14 relating to the status of the account Notices regarding
 15 nonsufficient funds, overdrafts, and the dishonor of any check
 16 drawn on the account within a period of six months of the date
 17 of request;

18 (3) Periodic statements mailed to the drawer by the drawee
 19 for the periods immediately prior to, during, and subsequent to
 20 the issuance of any check or other order for the payment of
 21 money which is the subject of the investigation or prosecution;
 22 or

23 (4) The last known home and business addresses and
 24 telephone numbers of the drawer.

25 The drawee shall release all of the information described
 26 in clauses (1) to (4) that it possesses within ten days after
 27 receipt of a request conforming to all of the provisions of this
 28 subdivision. The drawee may impose a reasonable fee for the
 29 cost for furnishing this information to law enforcement or
 30 prosecuting authorities, not to exceed 15 cents per page.

31 A drawee is not liable in a criminal or civil proceeding
 32 for releasing information in accordance with this subdivision.

33 Subd. 7. [RELEASE OF ACCOUNT INFORMATION TO PAYEE OR
 34 HOLDER.] If there is a written request to a drawee from a payee
 35 or holder of a check or other order for the payment of money
 36 that has been dishonored other than by a stop payment order,

1 which request is accompanied by a copy of the dishonored check
 2 or other order for payment of money, the drawee is not liable
 3 in a civil or criminal proceeding for releasing shall release
 4 the information specified in clauses (1) and (2) to the payee or
 5 holder any of a check that has been dishonored who makes a
 6 written request for this information and states in writing that
 7 the check has been dishonored and that 30 days have elapsed
 8 since the mailing of the notice described in subdivision 8 and
 9 who accompanies this request with a copy of the dishonored check
 10 and a copy of the notice of dishonor.

11 The requesting payee or holder shall notify the drawee
 12 immediately to cancel this request if payment is made before the
 13 drawee has released this information.

14 This subdivision applies to the following information
 15 relating to the drawer's account:

16 (1) Whether at the time the check or other order for
 17 payment of money was issued or presented for payment the drawer
 18 had sufficient funds or credit with the drawee, and whether at
 19 that time the account was open, closed, or restricted for any
 20 reason and the date it was closed or restricted; and

21 (2) The last known home and business addresses address and
 22 telephone numbers number of the drawer. A drawee may be liable
 23 in a civil or criminal proceeding for releasing the business
 24 address or business telephone number of the drawer to the payee
 25 or holder.

26 The drawee shall release all of the information described
 27 in clauses (1) and (2) that it possesses within ten days after
 28 receipt of a request conforming to all of the provisions of this
 29 subdivision. The drawee may require the person requesting the
 30 information to pay the reasonable costs, not to exceed 15 cents
 31 per page, of reproducing and mailing the requested information.

32 A drawee is not liable in a criminal or civil proceeding
 33 for releasing information in accordance with this subdivision.

34 Subd. 8. (NOTICE.) The provisions of subdivisions 6 and 7
 35 are not applicable unless the notice to the maker or drawer
 36 required by subdivision 3 states that if the check or other

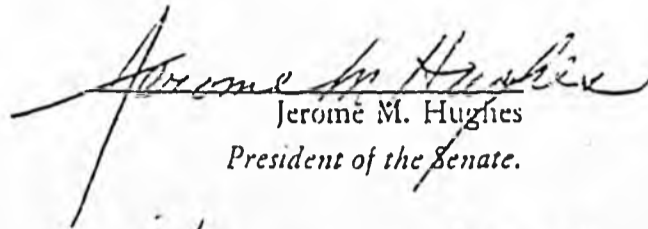
1 order for the payment of money is not paid in full within five
 2 business days after mailing of the notice, the drawee may will
 3 be authorized to release information relating to the account to
 4 the payee or holder of the check or other order for the payment
 5 of money and may also release this information to law
 6 enforcement or prosecuting authorities.

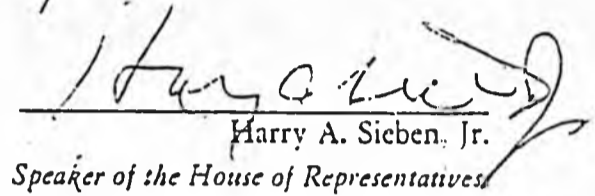
7 Sec. 11. [REPEALER.]

8 Minnesota Statutes 1982, section 48.511, is repealed.

9 Sec. 12. [EFFECTIVE DATE.]

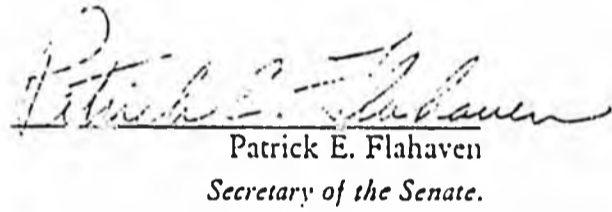
10 Sections 1 to 4 are effective January 1, 1984. Sections 5
 11 to 11 are effective August 1, 1983.


Jerome M. Hughes
President of the Senate.


Harry A. Sieben, Jr.
Speaker of the House of Representatives

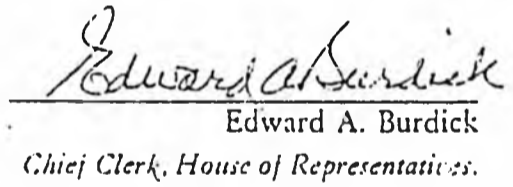
Passed the Senate this 12th day of May
nine hundred and eighty-three.

in the year of Our Lord one thousand


Patrick E. Flahaven
Secretary of the Senate.

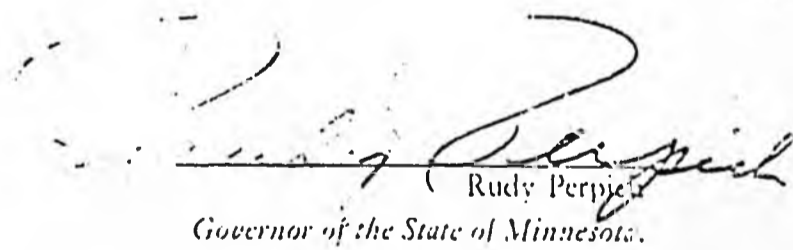
Passed the House of Representatives this 12th day of May
one thousand nine hundred and eighty-three.

in the year of Our Lord

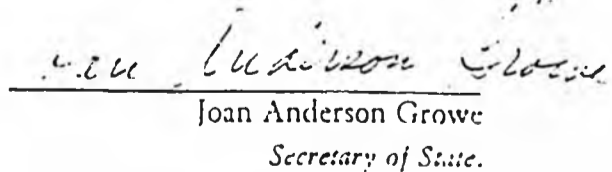

Edward A. Burdick
Chief Clerk, House of Representatives.

Approved

6/1/83


Rudy Perpich
Governor of the State of Minnesota.

Filed 6/1/83


Joan Anderson Grove
Secretary of State.

Referred ONLY to Labor Commerce

Dick sponsor-Ray co-sponsor-Kerttula

Re: Checking Account Bill - SB 360

- Before opening account, applicant must
- list if he/she had an account at another bank within 12 mths (banks feel this would cause them to check info + therefore raise cost to banks)
 - list if an account was closed without applicant's consent + why + list whether applicant had been convicted of a criminal offense because of the use of checks (banks feel the checking into this info will raise the cost)
 - if the applicant knowingly lies, the applicant is guilty of perjury (the courts use the word "perjury" under the new criminal code to mean under sworn testimony. They prefer the language "unsworn falsification")
 - Banks need to verify applicants info (cost in time + \$)
 - Applicant is denied checking account if
 - account is closed without consent within 12 mths
 - applicant was convicted of criminal offense dealing with checks within 24 mths. (what if a person has lots \$, but has history of bad check, the applicant would be denied)

- An pictorial identification card must be provided by banks (increase in costs)

- A person who writes a bad check is responsible for the amount of check PLUS civil penalty up to \$100 PLUS 12% interest of check amount, PLUS attorney fees* if check is over \$500 PLUS service charge (courts expect increase work load - fiscal note)

Randy C. Kelly

District 67A

Ramsey County

Committees:

Environment and Natural Resources

Judiciary

Criminal Justice Division

Taxes

Economic Development Division, Chairman



Minnesota House of Representatives

Harry A. Sieben, Jr., Speaker

January 31, 1984

RECEIVED

As per our conversation, I am sending you a copy of the bad check law which I authored and which became law on August 1, 1983.

I am also including the bill as first introduced and some other material.

In the summer of 1982, I formed an ad hoc taskforce comprised of bankers, merchants, police and prosecutors to identify what the problems were in this area and possible solutions.

We found a major criticism in that financial institutions rarely checked on predecessor account information for new applicants. So one of the major elements in the bill was to require some uniform information to be taken and a requirement for the financial institutions to verify this information. The banking community lobbied strongly against this provision but we prevailed.

The legislation is working well with approximately a 25% decline in the issuance of bad checks in Minnesota.

Please feel free to share this information I am sending with legislators in Alaska.

Good luck. It was a tough fight here in Minnesota but the results so far indicate that it was a worthwhile effort.

Sincerely,

Handwritten signature of Randy C. Kelly in cursive.

Randy C. Kelly
State Representative

RK:DP

Reply to: 343 State Office Building, St. Paul, Minnesota 55155

Office: (612) 296-4277

1901 Hyacinth, St. Paul, Minnesota 55119



NATIONAL
Bank of Alaska

Juneau Office: P.O. Box 1189 • Juneau, Alaska 99802 • (907) 586-3324

January 27, 1984

Senator Bill Ray
Pouch V
Juneau, Alaska 99811

Bill,

Attached is a copy of the check guarantee service available through National Bank of Alaska for its merchants. This service is available presently and I would be glad to demonstrate its use.

Sincerely,

A handwritten signature in cursive script that reads "Peter M. Crandall".

Peter M. Crandall
Vice President

PMC/kas

A DESCRIPTION OF THE CHECK GUARANTEE SERVICE

This packet of information is designed to briefly acquaint you with the Check Guarantee Service, and to help you apply this service in the best way.

This information is supplied by Telecredit, Inc., and the results of nationwide studies of check activity in America.

Welcome to the Check Guarantee Service.

THE CHECK GUARANTEE SERVICE:

YOUR KEY TO MORE PROFITABLE BUSINESS

Q. What is the Check Guarantee Service?

A. The Check Guarantee Service is a program developed by Telecredit, Inc. a California based corporation founded in 1961. With this program checks can be accepted from any customer on a guaranteed basis. If the check is returned by the bank, the store receives full payment.

Q. Any check?

A. It is necessary to obtain authorization through your P.O.S. terminal first. It takes only seconds. The service is available 7 days a week, 24 hours a day. If approved, any check written on any bank in the U.S.A. and U.S. possessions, is covered.

Checks that are covered include account closed, insufficient funds, refer to maker, uncollected funds, forgery, stolen, etc., excluding "stop payment." Both personal and company checks are covered.

Q. Why doesn't the plan cover "stop payment" checks?

A. Stop payment checks are few in number and represent a problem that can best be resolved between merchant and customer. (Auto dealerships please refer to addendum.)

Q. How long does it take to obtain reimbursement on a guaranteed check?

A. Simply a state issued driver's license or DMV I.D. card.

Q. Will the terminal advise the merchant of a decline?

A. No. The terminal will display a "call Telecredit" (a referral) at which time the merchant will call the Telecredit Authorization center.

Q. Does the store have to pay for a long distance call to Telecredit when they receive a "call Telecredit" response from their terminal?

A. No. Telecredit provides an "800" toll-free number.

Q. What if the check authorization is denied?

A. In a small percentage of cases, after a check is presented, the store will be advised by the operator that a check cannot be guaranteed. The customer may then make arrangements to use cash, a credit card, or other means of payment. At this point, Telecredit Service Corporation becomes visible to the customer. The merchant must then provide the customer a card explaining to the customer the situation and a means of getting in touch with Telecredit to resolve the matter.

Q. Does Telecredit have information on everyone with a driver's license or checking account?

A. No. It is a negative information file only, updated on a minute-to-minute basis.

Q. Does the store have to use their terminal to guarantee all checks presented?

A. No, not necessarily. The merchant should develop and enforce a check policy which best fits his needs, and use Check Guarantee Service in the areas of greatest benefit. Refer to the section entitled "Suggestions for Using Check Guarantee Service."

Q. Why should a merchant that knows all its customers participate?

A. The plan is especially useful for transients or people the merchant doesn't know personally. Since the merchant only pays for checks actually guaranteed through his terminal, it does not add to the cost of his terminal program.

Q. What marketing areas are currently covered by Telecredit?

A. All the U.S.A.

Q. How many checks are written every year?

A. Over 40 billion.

Q. What percentage of retail sales is made up of check writers?

A. Retail purchases are roughly: credit 40%, checks 40%, cash 20%. Millions of consumers either do not qualify for or care to use credit cards, but do write checks. Their business can easily be accepted with the use of the Check Guarantee Service.

Q. How many bad checks are cashed every hour?

A. Over \$100,00 worth.

Q. How many checks are currently being processed annually through the Telecredit system?

A. Nearly 15,000,000. Over \$2.0 billion a year, from over 150,000 merchants all across the country.

SUGGESTIONS FOR USING THE CHECK GUARANTEE SERVICE

Most subscribers do not find it necessary to guarantee every check.

Checks which are not usually guaranteed:

- Checks from customers of long standing.
- Checks under a certain dollar amount.
- Checks from customers who live and bank in the area and who have a great deal of supporting identification (several credit cards, company I.D., etc.)

Checks which are usually guaranteed:

- Checks from strangers who live or bank out of the area.
- Checks from people who have little I.D. other than a driver's license.
- Low numbered checks from 101 to 299, which indicate new accounts.
- Checks from people who are over their credit card limit.
- Checks after normal banking hours.
- Checks over a certain dollar amount.
- Checks with an address different than the address on the I.D.
- Checks taken during peak business hours when the clerk may not have time to fully review all I.D. or where business may be lost if customers have to stand in line for a long time.

CHECK GUARANTEE SERVICE REQUIREMENTS

When accepting a check under the guarantee service, the following requirements must be met:

- The name of the presenter must be imprinted by the issuing bank on the face of the check.
- The maker's address must be legibly recorded if it is not imprinted. P.O. boxes are not covered under the guarantee service. Street addresses can be handwritten.
- Company and payroll (commercial) checks must have the company name imprinted on them, and be issued no more than 15 days prior to the encashment date. The payee name and address must be legibly noted.
- Permanent driver's license number and state of issue must be recorded on the check.
- Personal checks must be payable to the accepting merchant.
- The authorization code must be written on the face of the check.
- Personal checks must be dated the same day they are cleared through the system.
- Any alterations to the check must be initialed by the customer.
- Written amount and numeric amount must be the same.
- Checks must be deposited within 3 business days of the date of encashment.
- Check Purchase Requests must be submitted no later than the following day after you receive notice of loss from your bank.

For your own protection, it is imperative that any check you accept for guarantee must comply with the service requirements.

Use the "cross check" system. Draw a "T" on the face of the check, where there is room, and write in the appropriate information as shown below:

Drivers License
State Code

Drivers License
Number

Date of Birth

Approval Number

HOW TO SUBMIT A CLAIM

Any claim on a guaranteed check must be mailed to the check authorization center according to the applicable instructions on the purchase request form no later than the following business day after you receive notice of loss from your bank.

When filing a claim, be sure to:

- Complete a Purchase Request form following the instructions on the cover page of the form.
- Mail the following materials to the check authorization center:
 - Purchase Request
 - Original Check
 - Bank Debit Advice
- Retain for your own files:
 - Purchase Request form Part II entitled "Merchant Copy"
 - Copy of check
 - Copy of Bank Debit Advice form

STOP PAYMENT CHECKS

Stop payment checks are not covered and will not be paid except under the following circumstances.

1. Stop payment is covered for new car dealerships for service, repairs, parts or rentals.
2. A stopped check that should have been marked "Account Closed."
3. A stopped check that should have been marked "Stolen or Forged."

Action:

1. Upon receiving a stop payment check, immediately call the bank of issue, inquire the reason for the stop, then:
 - A. Ask if the account shows that it had been closed prior to the date and time stamped on the request to stop payment.
 - B. Ask if the account shows that the check had been re . rted stolen prior to the "request to stop payment."
2. If either one of the above (A or B) has occurred, then request that the bank send you a letter to that effect. Attach a copy of that letter with the Telecredit Purchase Request, the actual check and Debit Advice. Mail at once in the envelope provided.

POLICY REGARDING COLLECTIONS OF CHECKS

OVER AND ABOVE THE AMOUNT GUARANTEED

Any instrument approved under the Check Guarantee Service with a face value above the guaranteed amount is subject to a 20 percent collection fee applied to the overage. For example: A check is negotiated for \$700, guaranteed for \$600 maximum, and subsequently submitted for check purchase. If collection is not successful prior to the claim payment date, the reimbursement check would be for the guaranteed amount of \$600. An additional reimbursement check drawn for \$80 would be mailed if and when full collection is made.

NOTE: Merchant should not accept full or partial payment on returned checks from the maker after a purchase request has been filed. The merchant should advise the customer to contact Telecredit Consumer Relations Department to make resitution.

RULES AND REGULATIONS

FEES: Lessee agrees to pay to the lessor the monthly rent, additional fees as required and any sales tax, if applicable, by the 5th of each month. Payments are to be delivered to the Park Manager at the Park Office in person or mailed to the above mailing address. Failure to pay the rent and fees by the 5th will result in the lessee paying a fine of \$20.00, if not paid by the 10th, lessee is subject to eviction. There will be a \$20.00 charge for NSF checks. A damage/rental security deposit of \$100.00 is required and shall be refunded upon termination to the extent not applied to repair damage, cleanup or pay delinquent rent and fees. Lessees who write 2 or more NSF checks in any 12 month period will no longer have their personal checks accepted and instead must pay the rent with a money order or cashier's check. The rental rate may be increased upon 30 days advance notice in writing, delivered in person or by mail.

DEFAULT: If any monthly payment of rent is not paid on or before the date on which it is due, or if lessee shall continue in violation of any other term, condition or requirement of this lease, including but not limited to the rules and regulations of this lease and after notice of such violation shall have been given to lessee for a period of 10 days without being remedied, then lessee shall be considered in default and in such event lessor shall have the remedies provided a landlord under the Alaska Residential Landlord-Tenant Act and the Alaska Forcible Entry and Detainer Statutes. In the event the lessor shall retake the premises after default or vacation by lessee, lessor will use reasonable diligence and methods to mitigate its damages and lessee shall remain liable for any difference between the rent for the unexpired portion of the term and the income derived in mitigation of damages plus the cost of such reentry, removing chattels and otherwise enforcing the provisions of this lease.

ASSIGNS: Lessee shall not sell, rent or assign (sublease) his mobile home without the written consent of the lessor, whose consent shall not be unreasonably withheld. Lessee shall have the right to assign the Lease to a successor purchaser or sublease if lessee is current in all lease payments and in full compliance with all terms of the Rules and Regulations, but lessor may require lessee to remove his mobile home from the park on the basis of its sale if the mobile home is in violation of laws or ordinances or terms of this Lease relating to health, safety or welfare, or if the proposed buyer refuses to assume the same terms as are in the Lease and Rules and Regulations or if the proposed buyer fails to evidence sufficient financial responsibility. The lessee shall remain principally liable and responsible for rent payment and other charges even if subleased or assigned, and shall also remain principally responsible for assuring that the sublessee is in full compliance with the terms of the Lease agreement and these rules and regulations.

INITIAL INSTALLATION AND HOME-UFS: Each lessee shall provide and install, at his own expense, approved insulated skirting (metal) for their mobile home and this shall be completed within 30 days following approved blocking and leveling. Hitches shall be removed from mobile homes in excess of 30-foot length. Hitches shall be covered if mobile home is under 30-foot.

Lessee must make own arrangements for electricity, cable T.V., fuel oil, propane, telephone, etc. All utilities to be installed by lessee according to utility company and Borough code. A park oil system is provided for the convenience of the lessee at a competitive cost. Lessee is not required to use the Park oil system and the lessor reserves the right to disconnect any lessee from the oil system upon 7 days written notice if the oil charge is not paid in full by the 5th of each month. Lessor may elect to discontinue the Park oil system and require lessee to provide their own fuel tanks upon 60 days written notice.

The lessee must place his space number on the front left side of his mobile home so service people can quickly locate his residence. The lessee is responsible for acquiring, marking and installing his mailbox at the approved station.

UTILITIES: Water, sewer and garbage pickup will be provided by the lessor. Lessor shall endeavor to keep in continuous operation appropriate facilities for furnishing lessee domestic water for household use. As to flavor, clarity, odor, purity, or other water qualities, lessor intends to take great care, but makes no legal warranty or representation to the lessee as to the results. Lessee shall be responsible for hooking up water and sewer connections and shall be responsible for purchasing and installing appropriate heat takes for the sewer and water pipes beneath his mobile home. All skirting shall be insulated (to an R-11 rating) around the perimeter of the mobile home. Lessees shall be responsible for damages as the consequence of non-use or failure to check heat rods; failure to secure insulated skirting and access panels or other negligence and the lessor will charge the lessee for the cost to repair damages to lessor's property or equipment caused by lessee's negligence to properly

ELECTRIC HEATING SYSTEMS are permitted as the Park system was not designed for electric heat use. Violators will remove electric heating units or face eviction. Damage to Park electrical equipment or lines caused by lessee's use of electrical heating units will be repaired at lessee's expense.

The sewage system is designed to remove only organic matter. The following items are not to be washed or dumped down the sink drains or flushed down the toilet: Grease of any sort; disposable diapers, or the plastic liners; cloth rags or paper towels; sanitary napkins or tampons of any type of their plastic tubes, bandaids or gauze, hair, filtered cigarette butts. The absence of these items in the lines will insure your line from plugging up, repair will be charged to the lessee. Because of buried utility lines, digging is not permitted without prior written consent of lessor.

Lessee must place garbage in a large plastic bag, placed in a garbage can, tied and covered with a tight fitting lid. Glass must be wrapped in newspapers so that garbage collectors will not be cut. Containers must be placed by road on the morning of collection day and returned following pickup. Garbage cans with tight fitting lids are also a Borough requirement and failure to abide by this regulation could result in a fine by the Borough "Litter Control". Garbage cans and lids must have space number indicated. Lessee is permitted only three garbage cans per week and any excess garbage is the lessee's responsibility to haul to the dump. Garbage strewn about by dogs or birds is the lessee's responsibility to immediately clean-up.

6. COCCHEANTS AND USE: The mobile home spaces are designed for single family occupancy. The lessor reserves the right to limit the number of occupants. Guests staying over two weeks must have the consent of the lessor. Lessee must notify lessor of an anticipated extended absence from the premises in excess of seven days; where the absence is unanticipated, the notice shall be given as soon as reasonably possible after the lessee knows absence will exceed 7 days.
7. PROMISES: No door-to-door solicitation, "For-Sale" signs, posters or advertising or any commercial signs are allowed without the consent of the lessor. The premises may not be used for unlawful purposes.
8. PETS: Pets are allowed in the park on a Probationary Basis Only. Lessee is allowed no more than two dogs or two cats. All animal excrement must be removed on a daily basis. No pets are to run free. This is both a Park and Borough regulation and violators may be required to remove the pet from the Park or face Eviction. Owners of habitually barking or vicious dogs are expected to muzzle the animal(s) or take necessary measures to prevent the animal from becoming a nuisance. Owners of problem animals who fail, after written notice by lessor, to rectify the situation may find themselves and their pet(s) living elsewhere.
9. MOTOR VEHICLES: Speed limit in the park is 10 mph. No major repair of vehicles will be allowed in the Park. Inoperable vehicles may not remain in lessee's mobile home space longer than 7 days.
10. PARKING: Parking for no more than two vehicles, neither being larger than a standard $3/4$ ton truck will be allowed to park in each space. Campers, boats and snow mobiles may be stored in the lessee's space only upon written consent of the Manager. Travel trailers are not permitted in the Park. Streets must be kept clear of vehicles and any cars parked on the streets will be towed away at owner's expense. Inoperable motor vehicles shall be removed from the park by their owner's on 24-hours written notice by the Park Manager or will be towed away at owner's expense.
11. EXCESS STRUCTURE: Car ports, storage sheds, fences, porches, etc., must comply with municipal building codes and plans must have the prior approval of Lessor as to plan, location and type of construction. All such structures must be removed upon lease termination.

Accessory buildings will be constructed or installed only after obtaining the consent of the Park Manager. All structures must be in harmony with the design and quality of mobile homes throughout the rest of the park. No alterations are to be made by the tenant except with permission of the management. Leantos, wanigans and carports shall not be less than 10 feet nor than than 15 feet in width, shall not extend beyond the front or the back of the mobile home. Leantos of 25 feet in length shall have 2 windows and 1 door. No structure shall be closer than 15 feet to another mobile home. All leantos shall be closed in and completed on the exterior and painted before work is done on the inside. Roofing materials must be of color and quality approved by the management. In no case will black tar or hot mop tar be acceptable. Siding must be of conventional house type siding. Plywood, Celotex, or the like will not be acceptable. All structures shall be painted on exterior within 15 days after construction. The color of the paint for fences and other structures should be complementary and harmonious with the main color of the mobile home. Variations in color may be authorized upon prior written approval of the management.

all times. No towels, wearing apparel, or laundry of any description is to be hung outside the mobile home. Television and C.B. antennas must be approved. Lessee whose mobile homes and spaces deteriorate below the minimum standard will be notified, and if the substandard condition is not corrected within 10 days, the lessee is subject to eviction.

13. MOBILE HOME CONDITION AND FITNESS: Lessee shall at all times maintain their mobile homes in good overall condition and favorable exterior appearance. Mobile homes shall be of three classifications: Class 1 - Class 2 - Class 3.

Class 1 Mobile homes are those in the category of new up to 10 years in age from date of manufacture. They shall be presumed fit and of good overall condition.

Class 2 Mobile homes are those manufactured more than 10 years ago, but not yet 25 years old. They shall not be presumed fit nor of acceptable overall condition. The lessor's concern about Class 2 mobile homes centers on external appearance and safety. Class 2 mobile homes must strictly adhere to the following terms respecting appearance, fitness, and safety: (1) There shall be no dents, punctures or damages to the exterior siding. (2) The exterior doors shall close tightly and not contain any broken glass or torn screens. (3) There shall be no broken glass or torn screens in the windows and window frames shall be neatly and securely affixed. (4) All windows (except those in exterior doors) shall be of thermopane construction or have appropriate fittings for storm windows; there shall be no exterior visqueen or plastic film covering. (5) Aged skirting shall be replaced with tight-fitting metal insulated skirting. Existing wood skirting must be painted. (6) The mobile home shall be washed and scrubbed at appropriate intervals to avoid the appearance of stains and discoloring. Exterior painting shall be undertaken at appropriate intervals when necessary and shall include attachments and improvements to the mobile home in the same or coordinating colors. (7) No false roof shall be applied or constructed, either flat or pitched over the mobile home. (8) Each lessee shall at intervals of 2 years or less, obtain a certificate or letter of inspection from the local fire department and/or a licensed plumbing/electrical contractor certifying the fitness of the furnace, water heater and electrical service wiring. Copies of the Certificates or letters of inspections shall be delivered to the Manager by September 1, 1982, and every two years thereafter. Lessee shall obtain a letter of approval from the local fire department certifying satisfactory inspection of all wood stove installations. (9) Lessees shall maintain the yard and landscaping in the same or better condition than pre-existing.

Class 3 Mobile Homes shall be those 25 years of age or older from date of manufacture. Class 3 mobile homes shall not be permitted into the park, and those mobile homes already in the park attaining this status shall be removed by Lessees at their expense, as soon as the owner discontinues personal occupancy and there shall be no assignment or subleasing of same, and while in the park must follow requirements pertaining to Class 2.

14. LANDSCAPING AND YARD MAINTENANCE: Landscaping and yard maintenance is required. If lessee does not landscape or maintain his yard, lessor will do so, and charge lessee for these services.
15. STREET MAINTENANCE: Lessor will maintain the streets within the park and provide snow removal from said streets; lessee is to clear his own driveway and walkways.
16. NOISE: No excessively loud parties will be permitted at any time, and tenants will always be expected to control their radios, television sets, musical instruments or noisemaking apparatus within a reasonable volume. Electronic or other devices which interfere with the reception of other tenants will not be permitted. Parents shall be expected to exercise control to prevent excessive noise by their children playing outside the home.
17. DANGEROUS ITEMS: Dangerous instruments, weapons of all types, including pellet and bullet guns, slingshots, bows and arrows and explosives of all kinds to include fireworks, are prohibited from use within the park.
18. VANDALISM: Tampering with park electric service connections or other park utility connections is strictly forbidden. Vandals will be prosecuted.
19. LIABILITY FOR DAMAGE: Lessees assume all liability for losses, injuries or damages caused by himself, members of his family, guests or pets, done to mobile homes, spaces or utilities, or other property or persons within the park, and shall hold harmless and defend the owners and operators from any loss, damages, or suits arising out of such losses, injuries or damage. The lessor will not be responsible for any accidents, injuries or losses of or damage to property caused by fire, theft, wind

20. TAXES: Lessee agrees to pay any municipal sales taxes on rents and fees and to remit same with the monthly payment. Lessor shall pay the applicable municipal real property tax, but lessee shall assume responsibility for payment of the municipal taxes attributable to the mobile home and improvements thereto regardless of whether said taxes be levied and assessed as real or personal property.
21. EASEMENT RESERVED: The lessor reserves an easement to enter upon the leased space for the purpose of installing, inspecting, maintaining or replacing pipes, drainage facilities, electrical lines, telephone lines, television cables or any other facility or utility, and for landscaping.
22. MUNICIPAL BUILDING CODES: References in these Rules and Regulations to the "building codes" shall mean the then existing editions of the Uniform Building Code and Uniform Housing Code as adopted by the City and Borough of Juneau and have application to each of the mobile homes in Glacier View Trailer Court as if situated on a private lot (except concrete foundation and blocking requirements).
23. CHANGES IN RULES AND REGULATIONS: Any of the Rules and Regulations may be amended, changed or suspended in the discretion of the lessors, but shall be effective upon given thirty (30) days advance notice in writing.
24. NOTICE: Notice shall be deemed furnished when given by mail, postage prepaid, to the manager at the address stated herein or to lessee at the address recited in the Lease Agreement or when delivered in person.
25. ABANDONED PROPERTY: Property abandoned by the lessee shall be handled by the lessor in accordance with the procedures prescribed by Alaska Statute Sec. 34.03.260.
26. DECISION ON VIOLATIONS: Lessor shall be the final judge of whether the park's Rules and Regulations are being observed. If the lessor shall fail to insist on the keeping of any particular covenant or agreement contained in this lease, such failure to enforce such covenant or agreement shall not be construed as a waiver of the same, and no waiver of any default hereunder shall be considered a waiver of any subsequent default of like nature. All the terms hereof may be enforced at any time.
27. MANAGER: Until notified to the contrary in writing, the Lessor's Manager is William A. Barnes, located at 3555 Kendenhall Loop Road, Glacier View Trailer Court Office and whose mailing address is F. C. Box 3173, Juneau, Alaska 99803, telephone (907) 789-9724.

Collateral references. - 60 Am. Jur. 2d, Perjury, § 1 et seq.

70 C.J.S., Perjury, § 1 et seq.

False statement made under fear or compulsion as perjury, 4 ALR 1119.

Offense of perjury as affected by questions relating to jurisdiction of court before which testimony was given, 82 ALR 1127.

Oaths taken in pursuance of administrative requirement as predicate for criminal offense if perjury, 108 ALR 1240.

Contempt, procuring perjury as, 29 ALR2d 1157.

Imputation of perjury or false swearing as actionable per se, 38 ALR2d 161.

Materiality of testimony assigned as perjury as question for court or jury, 62 ALR2d 1027.

Statement of belief or opinion as perjury, 66 ALR2d 791.

Perjury or false swearing as contempt, 89 ALR2d 1258.

Public relief or welfare payments, perjury in connection with application for or receipt of, 92 ALR2d 447.

Dismissal of action because of party's perjury or suppression of evidence, 11 ALR3d 1153.

Actionability of conspiracy to procure false testimony or other evidence, 31 ALR3d 1423.

Offense of perjury as affected by lack of jurisdiction by court or government body before which false testimony was given, 36 ALR3d 1038.

Perjury or wilfully false testimony of expert witness as basis for new trial on ground of newly discovered evidence, 38 ALR3d 812.

Question if perjury should ^{not} be used on pg 2, line 13

Sec. 11.56.200. Perjury. (a) A person commits the crime of perjury if the person makes a false sworn statement which the person does not believe to be true.

(b) In a prosecution under this section, it is not a defense that (1) the statement was inadmissible under the rules of evidence; or (2) the oath or affirmation was taken or administered in an irregular manner.

(c) Perjury is a class B felony. (§ 6 ch 166 SLA 1978)

Cross references. - For falsification of affidavits required under AS 16.05.407 and 16.05.408 as perjury, see AS 16.05.407(a) and 16.05.408.

NOTES TO DECISIONS

Editor's notes. - Most of the cases cited in the notes below were decided under former AS 11.30.010.

Common law. - At common law in order to constitute perjury the false testimony must relate to a material point tending to prove a fact bearing on the issues before a court. The common law was modified by former AS 11.30.010. Beckley v. State, Sup. Ct. Op. No. 490 (File No. 887), 443 P.2d 51 (1968).

The common-law crime of perjury, which requires materiality, was modified in Alaska by subsection (a) of former AS 11.30.010. Nelson v. State, Sup. Ct. Op. No. 1237 (File No. 2459), 546 P.2d 592 (1976).

Scope of common-law perjury enlarged. - See Beckley v. State, Sup. Ct. Op. No. 490 (File No. 887), 443 P.2d 51 (1968); Nelson v. State, Sup. Ct. Op. No. 1237 (File No. 2459), 546 P.2d 592 (1976).

When crime complete. - The crime under former AS 11.30.010 was complete if one willfully swore falsely in regard to any matter respecting which an oath was authorized or required. Beckley v. State, Sup. Ct. Op. No. 490 (File No. 887), 443 P.2d 51 (1968); Nelson v. State, Sup. Ct. Op. No. 1237 (File No. 2459), 546 P.2d 592 (1976).

Materiality is unnecessary. - Materiality is not mentioned in the Alaska perjury statute; therefore it is unnecessary, in

Penalties

Unsworn Falsification
- 1 yr. jail / \$5000 fine

Perjury
- 10 yr. jail / \$50,000 fine

This are maximum

ing as contempt,
payments, per-
application for or
because of party's
of evidence, 11
they to give or to
or other evidence,
affected by lack of
government body
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false testimony of
for new trial on
evidenced evidence, 38

crime of perjury
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on-law perjury
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887), 443 P.2d 51
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1237 (File No. 2459), 546 P.2d 592 (1976).

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File No. 887), 443
v. State, Sup. Ct.
1237 (File No. 2459), 546 P.2d 592

essary. — Mate-
in the Alaska per-
is unnecessary, in

order to prove the crime of perjury, to establish that the matter concerning which willfully false testimony under oath was given was material to an issue before the court. Beckley v. State, Sup. Ct. Op. No. 430 (File No. 887), 443 P.2d 51 (1968); Nelson v. State, Sup. Ct. Op. No. 1237 (File No. 2459), 546 P.2d 592 (1976).

Admissibility of illegally seized evidence. — Under the exception to the exclusionary rule for illegally seized evidence in criminal prosecutions in Evid. R. 412(2), illegally seized evidence may be used in perjury prosecutions, unless the police misconduct amounts to a flagrant or egregious invasion of personal rights. Wortham v. State, Sup. Ct. Op. No. 2697 (File No. 5459), 657 P.2d 856 (1983).

Sec. 11.56.210. Unsworn falsification. (a) A person commits the crime of unsworn falsification if, with the intent to mislead a public servant in the performance of a duty, the person submits a false written or recorded statement which the person does not believe to be true

- (1) in an application for a benefit; or
- (2) on a form bearing notice, authorized by law, that false statements made in it are punishable.

(b) Unsworn falsification is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

Sec. 11.56.220. Proof of guilt. In a prosecution for perjury or unsworn falsification it is not necessary that proof be made by a particular number of witnesses or by documentary or other type of evidence. (§ 6 ch 166 SLA 1978)

Given the absence of flagrant police misconduct in recording the conversation between defendant and the undercover police agent, pursuant to the provisions of Evid. R. 412(2), the transcript of the tape recording was admissible in the perjury prosecution of defendant. Wortham v. State, Sup. Ct. Op. No. 2697 (File No. 5459), 657 P.2d 856 (1983).

Quoted in Boyles v. State, Ct. App. Op. No. 103 (File No. 5667), 647 P.2d 1113 (1982).

Cited in Hoover v. State, Ct. App. Op. No. 73 (File No. 3223), 641 P.2d 1263 (1982).

NOTES TO DECISIONS

Editor's notes. — The case cited in the notes below was decided under former AS 11.30.010.

Required proof. — To be guilty of perjury, it was necessary under former law to prove that a person under oath willfully and falsely swore. Nelson v. State, Sup. Ct. Op. No. 1237 (File No. 2459), 546 P.2d 592 (1976).

One could not be convicted of perjury on the uncorroborated testimony of one witness under former law. Nelson v. State, Sup. Ct. Op. No. 1237 (File No. 2459), 546 P.2d 592 (1976).

Testimony of perjury had to be corroborated by other evidence, either direct or circumstantial. Nelson v. State,

Sup. Ct. Op. No. 1237 (File No. 2459), 546 P.2d 592 (1976).

The purpose of such a rule was to prevent ill-founded retaliatory attacks by perjury prosecution upon a witness based on no more than the contrary oath of another. Nelson v. State, Sup. Ct. Op. No. 1237 (File No. 2459), 546 P.2d 592 (1976).

What was corroborative evidence. — In order to be corroborative, evidence had to induce a rational belief that what the witness said was true. Nelson v. State, Sup. Ct. Op. No. 1237 (File No. 2459), 546 P.2d 592 (1976).

Sufficiency of evidence. — See Nelson v. State, Sup. Ct. Op. No. 1237 (File No. 2459), 546 P.2d 592 (1976).

Assembly Bill No. 1226

CHAPTER 522

An act to add Section 1719 to the Civil Code, relating to commercial paper.

[Approved by Governor July 28, 1983. Filed with Secretary of State July 28, 1983.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1226, Katz. Bad checks: punitive damages.

Existing law makes it a crime to fraudulently write a bad check, knowing that it is made upon insufficient funds.

This bill would create a cause of action for treble the amount owing but in no case less than \$100 or more than \$500 for failure to pay upon a dishonored check, in cash, within 30 days of demand for payment, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 1719 is added to the Civil Code, to read:

1719. Notwithstanding any penal sanctions which may apply, any person who makes, utters, draws, or delivers any check, or draft, or order upon any bank or depository, or person, or firm, or corporation, for the payment of money, which refuses to honor the same for lack of funds or credit to pay, or because the maker has no account with the drawee, and who fails to pay the same amount in cash to the payee within 30 days following a written demand therefor delivered to the maker by certified mail, shall be liable to the payee, in addition to the amount owing upon such check or draft or order damages of treble the amount so owing, but in no case less than one hundred dollars (\$100), and in no case more than five hundred dollars (\$500).

A cause of action under this section may be brought in small claims court, if it does not exceed the jurisdiction of that court, or in any other appropriate court.

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TOPS/MANDATORY

TECHNICAL OPERATION PROCEDURES

- A D V A N C E -

T.B. 83-06

AUGUST 30, 1983

TO: ALL CREDIT UNIONS

SUBJECT: BAD CHECKS OR DRAFTS (A.B. 1226)

Effective January 1, 1984, if a member writes a bad check or draft made payable to the credit union, you may make a claim for the face amount, plus triple the amount owing. Checks or drafts written prior to January, that are dishonored after the effective date, are subject to the new law.

Regardless of the check or draft amount, you may make a claim for at least \$100. You may not, however, make a claim exceeding \$500.

Example 1: A member writes a \$15 bad check. You may make a claim for \$100.

Example 2: A member writes a \$100 bad check. You may make a claim for \$400 - [\$100 + (3 x \$100)].

Example 3: A member writes a \$300 bad check. You may make a claim for \$500.

Claims may be filed in small claims court, or any other appropriate court. Before filing a claim, your credit union must deliver, by certified mail, a written demand for payment in cash. After the demand is delivered, the member has 30 days to pay. If the member doesn't pay, you may then make your claim.

This new law applies not only to members that write bad checks or drafts; it also applies to all other persons or organizations. This law does not allow the credit union to file a claim when a share draft, made payable to a third party and drawn on the credit union, is dishonored.



RESEARCH & INFORMATION

2322 South Garey Ave, Pomona, CA 91766

800/472-1702 or 714/628-6044

LARRY COX
Director, Governmental Affairs



1121 "L" Street, Suite 408, Sacramento, CA 95814
916/443-7935

NIA
UNION

MAR 12 1984

6 March 1984

Gerry Ellison
Alaska Credit Union League
2509 Eide Street
Anchorage, Alaska 99503

RE: AB 1226 (Katz); Chapter 522, Statutes of 1983.

Dear Gerry:

Enclosed, please find a copy of AB 1226 (Katz), Chapter 522, Statutes of 1983 (effective January 1, 1984) and a copy of our TOPS release (83-66) addressing the bill.

AB 1226 added Section 1719 of the Civil Code to create a statutory cause of action for the amount of a dishonored check or draft plus triple the amount of a bad check or draft but not less than \$100 nor more than \$500 if the dishonored check is not paid in cash within 30 days of a demand for payment. This cause of action may be brought in a small claims court if it is within the jurisdiction of the small claims court.¹ It may also be brought in any appropriate court.² In our small claims court, no attorney may appear except on a matter that affects him personally.³ The statutory cause of action exists in addition to any penal sanctions that may be applicable.

Please don't hesitate to contact us if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads 'Larry J. Cox' followed by a slanted 'gm'.

Larry J. Cox
Director of Government Relations

LJC:jm

Enc.

cc: Laura Porter

Gerry Ellison
6 March 1984
Page II

Footnotes:

1. See CAL. CIV. PROC. § 116.2 for the monetary jurisdiction of the small claims court (\$1,500.).
2. See CAL. CIV. PROC. § 86 for the monetary jurisdiction of the municipal courts (\$15,000.).
3. See CAL. CIV. PROC. § 117.4.

SB 360 TITLE & SPONSOR SUMMARY 16:31 6/04/84 PAGE 1 OF 3

AMENDED TITLE: CSSB 360(JUD)
AN ACT RELATING TO CHECKING ACCOUNTS
PRIME SPONSOR: RAY.
CO-SPONSORS: KERTTULA.

CURRENT STATUS: 5/28/84 TRANSM TO GOVERNOR

SB 360 SENATE ACTION 16:31 6/04/84 PAGE 2 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/19/84	01	1799	FIRST READING -- COMMITTEE REPORTS
04/10/84	02	2687	JUD COMM REFERRAL ADDED BY UNAN CONSENT
04/12/84	03	2716	MOVED FROM L&C TO JUD BY UNAN CONSENT
05/03/84	04	2903	JUD -- CS03, NR02
05/16/84	05	3109	RLS -- JUD CS04, OTHER04 TAKEN UP IMMEDIATELY
05/16/84	06	3113	SECOND READING
05/16/84	07	3113	JUD CS ADOPTED BY UNAN CONSENT
05/16/84	08	3113	ADVANCED TO 3RD READING BY UNAN CONSENT
05/16/84	09	3113	THIRD READING
05/16/84	10	3113	PASSED BY DIV 12-01-00
05/28/84	19	3331	TRANSMITTED TO GOVERNOR
***	**	**	*** ** *

SB 360 HOUSE ACTION 16:31 6/04/84 PAGE 3 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
05/17/84	11	3890	FIRST READING -- COMMITTEE REPORTS
05/24/84	12	4000	JUD -- DP05, NR01
05/25/84	13	4048	SECOND READING
05/25/84	14	4048	ADVANCED TO 3RD READING BY UNAN CONSENT
05/25/84	15	4048	THIRD READING
05/25/84	16	4048	PASSED BY DIV 33-05-02
05/25/84	17	4049	NOTICE OF RECONSIDERATION GIVEN
05/26/84	18	4083	RECONSIDERATION NOT TAKEN UP
***	**	**	*** *** *

For an Act entitled: "An Act relating to bad checks and providing
for an effective date."

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

*Section 1. AS 11.46. is amended by adding a new section to read:

Sec. 11.46.290. BAD CHECK CIVIL PENALTIES. (a) In any action against a person who makes any check for the payment of money which has been dishonored, the plaintiff may recover from the defendant damages in an amount equal to \$100.00 or triple the amount for which the check is drawn, whichever is greater. However, damages recovered under this section shall not exceed by more than \$1,000.00 the amount of the check and may be awarded only if the plaintiff made written demand of the defendant for payment of the amount of the check not less than 15 days before commencing the action and if the defendant failed to tender to the plaintiff, prior to commencement of the action, an amount of money not less than the original amount of the check plus costs incurred by the plaintiff not to exceed \$25.00.

(b) A cause of action under this section may be brought in small claims court, if it does not exceed the jurisdiction of that court, or in any other appropriate court.

(c) Subsequent to the commencement of the action but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the sum of the amount of the check plus the plaintiff's incurred court and service costs.

(d) In this section

(1) "check" means the same as defined in AS
11.46.280(c)(2);

(2) "dishonored", in addition to meaning the same as
defined in AS 11.46.280(b), means a check which is not paid due to a stop
payment being issued without cause;

(3) "written demand" means providing a notice in writing
to the maker at the address shown on the dishonored check by first class
mail or hand delivery advising the drawer that the check has been
dishonored and explaining the civil penalties stipulated by this section.

*Sec. 2. This act takes effect immediately in accordance with AS
01.10.070(c).

Dear NFIB Member:

This Ballot is solicited by NFIB Research and Education Foundation to gather information pertaining to small business issues in your state.

Your answers are valuable and will enhance the survey.

Please return the entire Ballot. Thank you.

Very truly yours,

John E. Sloan, Jr., President
NFIB Research and Education Foundation

GENERAL BUSINESS

Interest Rates

1. Should interest rate ceilings be repealed on: (vote on each)

a. Bank loans of \$25,000 or less
32% Favor 60% Oppose 8% Undecided

b. Savings and loan association loans of \$25,000 or less
34% Favor 58% Oppose 8% Undecided

c. Retail installment contracts
36% Favor 54% Oppose 10% Undecided

d. Retail open-ended charge accounts
34% Favor 56% Oppose 10% Undecided

e. Credit card revolving accounts
33% Favor 58% Oppose 9% Undecided

f. State chartered credit unions
35% Favor 55% Oppose 10% Undecided

g. Small loan finance company loans of \$10,000 or less
33% Favor 58% Oppose 9% Undecided

BACKGROUND: HB 246, presently in the Senate Labor and Commerce Committee proposes to remove all limitations on all types of credit in Alaska. The measure would permit each financial institution and all businesses extending credit to charge whatever interest rate they wish, subject only to competition of the marketplace and negotiation with each individual customer.

Current law limits banks and savings and loan associations to a maximum interest rate of 5% over the federal discount rate in effect at the time of the loan on any loan of \$25,000 or less. There are no interest rate limitations on loans in excess of \$25,000. During the past few months, the federal discount rate has been 8.5%, thereby setting the maximum allowable interest rate at 13.5%.

A retail business selling merchandise on a retail installment contract is presently limited to a maximum interest rate of 10% per year on the first \$1,000 of credit extended, and 8% on credit in excess of \$1,000. However, for retail businesses as well as credit card companies extending open-ended revolving charge accounts, the maximum interest rate is 18% per year on the first \$1,000 of credit extended and the federal discount rate plus 5% on credit in excess of \$1,000. A state chartered credit union is presently limited to 15% or 5% over the federal discount rate, whichever is higher on loans of any amount. Small loan finance companies can now levy a maximum interest rate of 36% per year on the first \$850 of credit extended and 24% on credit up to \$10,000.

Proponents of the removal of all interest rate limitations argue that many financial institutions and businesses lost money on their credit transactions during the period of very high interest rates and, further, the limits are no longer necessary. If the limitations were removed, the marketplace, i.e., competition for the financing, would set the rates at reasonable levels in line with the risks inherent in the particular credit transaction.

Opponents argue that Alaska does not have a well developed marketplace and there are many communities where no competition exists either for banking or retail credit. The removal of all limits would permit the charging of unreasonably high rates. Further, it has also been pointed out that in the case of consumer loans and small business loans under \$25,000, the marketplace seems to react very slowly when interest rates are falling in general. For example during the first few months in 1983 in California, where there are no interest rate limitations, interest rates being charged on small loans by banks were running at 20% to 25%, while rates in Alaska were about 14%.

Interest Rates

2. Should interest rates on balances of \$1,000 or less that are limited to a maximum, such as the 18% for business credit or credit card companies, be modified so the maximum rate could be increased with the federal discount rate, once the federal discount rate reached a pre-set level?

39% Favor 52% Oppose 9% Undecided

BACKGROUND: Proponents of this concept feel that businesses extending financing and credit should not be so limited in the rates they charge that they lose money; therefore, the limitations should be allowed to rise when interest rates are generally high. It has been proposed that the maximum rate on accounts with balances of \$1,000 or less be set at 18%, or 6% over the federal discount rate, whichever is higher.

NFIB

**National Federation
of Independent Business**

Research and Education Foundation
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San Mateo, CA 94403

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

While in Juneau
POUCH V
JUNEAU, ALASKA 99811



Senate

VICE CHAIRMAN
SENATE RESOURCES COMMITTEE
MEMBER
SENATE JUDICIARY COMMITTEE
WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE
WESTERN CONFERENCE COUNCIL
OF STATE GOVERNMENTS

February 21, 1984

Ms. Terilyn Lynn,
Manager
Authentic Alaska Craft
P. O. Box 8616
Ketchikan, Alaska 99901

Dear Ms. Lynn:

The bill about which you wrote me the other day, SB 360, has been referred to one committee only - that being the Senate Labor and Commerce Committee, which is chaired by Senator Eliason.

Senator Ray, with whom I serve on his Judiciary Committee, will no doubt keep an eye on the bill to see if it cannot be expedited on its way through the legislative process. I'll help him in any way I can, and I don't know why I couldn't support the legislation when it comes before the Senate for a vote.

Thanks for writing.

Regards,

Robert H. Ziegler, Sr.

RHZ:lk

cc: Senator Ray

cc: Sen. Eliason

Proposed bill might put a stop to bad check writing

By DEBBIE REINWAND
ROSE

The Juneau Empire

A bill which would require banks to compile information on a potential customer's financial history before issuing that customer a checking account faces re-working by the Senate Labor and Commerce Committee. *Empire 2/9/89*

The measure, which was heard by the committee Tuesday, is targeted at decreasing the number of bad checks written in Alaska, said sponsor Sen. Bill Ray, D-Juneau.

"We've been trying for the last five or six years to find a way to combat the NSF (non-sufficient funds) check problem so we can get a handle

on it," said Ray. "Minnesota passed a similar law last year and it has cut down their bad check rate by 25 percent."

Under the bill's provisions, in addition to asking for basic vital statistics, banks would have to ask customers for information about their past checking accounts, whether any accounts were closed due to ap-

plicants' writing bad checks, and whether applicants had been convicted of writing bad checks in the past two years.

Banks would also be required to issue picture identification cards.

Testimony from local bank officials was primarily against the legislation, although suggestions for changes to the

bill were offered.

"We are neither in favor or against the bill, but want to point out the problems with it as written," said B.M. Behrends Bank Executive Vice President Craig Dahl.

"There's nothing wrong with the bill, but the mechanisms don't exist at this time to make this come about. In Minnesota they have check systems set up which means everytime they close a customer's account for an overdraw situation, it is reported," said Dahl. "We have no central system to turn to get this kind of information. Someone could tell us they had never had bad check problems, but we still have to try to confirm their history."

In addition, the delay to "99 percent of the customers who

are honest" would be unnecessary, said Dahl.

However, Labor and Commerce Chairman Sen. Dick Eliason, R-Sitka, said banks "are very careful about a person's financial history when it comes to loaning money because they then have something at risk."

During committee work on the measure, which is co-sponsored by Senate President Jay Kerttula, D-Palmer, Eliason hopes to "find some kind of balance we can agree on."

Newspaper

Assembly Bill No. 1226

CHAPTER 522

An act to add Section 1719 to the Civil Code, relating to commercial paper.

[Approved by Governor July 28, 1983. Filed with Secretary of State July 28, 1983.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1226, Katz. Bad checks: punitive damages.

Existing law makes it a crime to fraudulently write a bad check, knowing that it is made upon insufficient funds.

This bill would create a cause of action for treble the amount owing but in no case less than \$100 or more than \$500 for failure to pay upon a dishonored check, in cash, within 30 days of demand for payment, as specified.

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A cause of action under this section may be brought in small claims court, if it does not exceed the jurisdiction of that court, or in any other appropriate court.

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TOPS MANDATORY

TECHNICAL OPERATION PROCEDURES

- A D V A N C E -

T.B. 83-66

AUGUST 30, 1983

TO: ALL CREDIT UNIONS

SUBJECT: BAD CHECKS OR DRAFTS (A.B. 1226)

Effective January 1, 1984, if a member writes a bad check or draft made payable to the credit union, you may make a claim for the face amount, plus triple the amount owing. Checks or drafts written prior to January, that are dishonored after the effective date, are subject to the new law.

Regardless of the check or draft amount, you may make a claim for at least \$100. You may not, however, make a claim exceeding \$500.

Example 1: A member writes a \$15 bad check. You may make a claim for \$100.

Example 2: A member writes a \$100 bad check. You may make a claim for \$400 - [\$100 + (3 x \$100)].

Example 3: A member writes a \$300 bad check. You may make a claim for \$500.

Claims may be filed in small claims court, or any other appropriate court. Before filing a claim, your credit union must deliver, by certified mail, a written demand for payment in cash. After the demand is delivered, the member has 30 days to pay. If the member doesn't pay, you may then make your claim.

This new law applies not only to members that write bad checks or drafts; it also applies to all other persons or organizations. This law does not allow the credit union to file a claim when a share draft, made payable to a third party and drawn on the credit union, is dishonored.



RESEARCH & INFORMATION

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STATE OF ALASKA

FEB 27 1984

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

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DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

February 23, 1984

Honorable John C. Sackett
Senate Labor and Commerce
Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Sackett:

Re: Senate Bill 360

You have asked me to inquire if Minnesota banks, organized under federal or national charter, are required to comply with Minnesota law concerning procedures for opening checking accounts. You have also asked me to check with the Comptroller of Currency's office concerning any activities they may have concerning nonsufficient funds checks on a national level.


First, it appears that there is no question in Minnesota that all financial institutions fall under their checking account laws. Minnesota bases this on their definition "financial intermediaries means any person doing business in this state who offers transaction accounts to the public." (45.512.(1)(a)).

In checking with the Comptroller of Currency's office in Washington, D.C., we were advised that there are no federal rules, regulations or statutes that regulate how national banks deal with bad checks nor are they aware of anything being proposed.

There are, however, recent statements by the Comptroller of Currency in which he may preempt state laws when it involves fees charged by nationally chartered banks. There is a question if the national banks would comply with any fee limitations on checks if one were to be established by state law.

I hope this is of some assistance to you.

Sincerely,


Willis F. Kirkpatrick
Director

WFK/saL/2-2
22384a

Questions Mount in Congress On Comptroller's Fee Ruling

By JAY ROSENSTEIN

WASHINGTON — Comptroller of the Currency C.T. Conover has issued a defense of criticism that he may have acted improperly or illegally in ruling that states cannot limit fees that national banks set on deposit accounts.

But banking law experts and other observers here said enough question marks still surround the situation that it could be a long time before the matter is settled.

Mr. Conover disclosed in a letter to Congress last week that while he believes published reports questioning the motives for his decision are "unwarranted and untrue," he has asked the Treasury Department's Inspector General to review the matter. The Comptroller's office is a division of the Treasury Department.

"I expect that the findings will confirm that our procedures were appropriate and that there was no illegal or unethical conduct," Mr. Conover wrote in the February 1 letter to Mr. Minish. The letter came in response to a request for an elaboration on the rulemaking.

But an aide to Rep. Joseph G. Minish, D-N.J., said a congressional hearing is under consideration to look further into the motives and justification for Mr. Conover's ruling and the possible impact on the consumer. Mr. Minish is chairman of the general oversight and renegotiation subcommittee of the House Banking Committee.

The broader issue of bank service fees and whether they are too excessive is to be the subject of hearings this year. Rep. Fernand J. St Germain, D-R.I., who has called for the hearings, sent a letter to his House colleagues Friday asking for any case histories in their files or any received in the next few weeks.

Attention and Criticism

The Comptroller's ruling has generated much attention and criticism for reasons that include:

- The fact that it was issued as an interpretive ruling, rather than a formal rule with time for the public to comment.

- Concerns that the end result might preclude state governments from setting limits on fees for bounced checks, check processing, and other deposit services — a sensitive states' rights issue.

- The timing of the ruling and whether a potential conflict of interest existed. Lawyers for Crocker National Bank, the defendant in a California lawsuit regarding fees, notified the court of the Comptroller's interpretive ruling the day before it appeared in the Federal Register. It also was issued shortly before the date of oral arguments in the case.

This timing has raised questions as to how, why, and when Mr. Conover, a former California bank consultant, decided to issue the ruling. In his letter to Mr. Minish, Mr. Conover said the ruling was issued as an interpretation of law and not as a formal regulation that would have the force or effect of law. As a result, he said, no period for public comment was required.

Responding to criticism that the ruling would preempt state law without sufficient justification, Mr. Conover said state laws on the fee issue would be preempted not by his ruling, but by "the federal statutory scheme" for the regulation of national banks and by congressional efforts to deregulate deposit accounts.

"In other words, we believe that by beginning to dismantle its pervasive structure of deposit [regulation], Congress did not intend to invite states to re-regulate those accounts," he said.

Mr. Conover added that he plans to issue a clarification of the ruling "to put an end to the misperceptions and misunderstandings regarding its publications." In it, he said, he would include a notice that banks should not take the ruling as encouragement to raise prices without regard to prudent or fair banking practices.

As for the timing, Mr. Conover said the position that state service charge limits should be preempted actually was taken in December 1982 in briefs filed with California state courts involving several national banks. The same position was taken in later court briefs before a decision was reached to issue "a public statement of broad application, i.e., the interpretive ruling."

Responding to allegations that the timing of the ruling indicated an effort to influence the California court case against Crocker, a brief filed by the Comptroller's office in that case on Jan 27 stated that the ruling had been in the making for four months and that it was issued as nationwide policy, "not merely a matter of convenience to a particular litigant."

But according to banking lawyers who are following the case and declined to be identified, questions remain about the validity of the Comptroller's ruling and the way it was handled. They said the matter might have to be resolved in the courts, perhaps through the Crocker case.

Several attorneys said the agency might be on weak ground by citing a scheme of laws, rather than particular law, to preempt state authority over fees.

Some said Mr. Conover probably will be pressed by Congress to explain why public comment was not provided before issuing the ruling, and how that relates to the Crocker case.

Federalization Intended?

One attorney said he believed Mr. Conover's ruling was intended "to federalize the issue" in the Crocker case so there would be an opportunity to take the issue to the U.S. Supreme Court if the bank lost at the state level. The lawyer said Mr. Conover opposes state interference with bank pricing policies and that he probably is concerned that this case could have broad implications for national banks elsewhere.

"The economic thinking of the U.S. Supreme Court is 180 degrees from the California Supreme Court, and they could throw out the whole theory," the banking attorney said.

The attorneys said the issue could add to congressional consideration of consumer protection legislation in the field of fees and delayed funds availability.

Several of the banking law experts defended Mr. Conover, saying his goal is to help banks compete in the marketplace more than to protect any one bank. As one said, "The only problem is the timing is most unfortunate." ■

Dick

Re: Checking Account Bill - SB360

- Before opening account, applicant must
- list if he/she had an account at another bank within 12 mths (banks feel this would cause them to check info + therefore raise cost to banks)
 - list if an account was closed without applicant's consent + why + list whether applicant had been convicted of a criminal offense because of the use of checks (banks feel the checking into this info will raise the cost)
 - if the applicant knowingly lies, the applicant is guilty of perjury (the courts use the word "perjury" under the new criminal code to mean under sworn testimony. They prefer the language "unsworn falsification")
 - Banks need to verify applicants info (cost in time + \$)
 - Applicant is denied checking account if
 - account is closed without consent within 12 mths
 - applicant was convicted of criminal offense dealing with checks within 24 mths. (what if a person has lots of \$, but has history of bad check, the applicant would be denied)

- An pictorial identification card must be provided by banks (increase in costs)

- A person who writes a bad check is responsible for the amount of check PLUS civil penalty up to \$100 PLUS 12% interest of check amount, PLUS attorney fees* if check is over \$500 PLUS service charge (courts expect increase work load - fiscal note)