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# When is it your money?

Banks rarely let you draw on a large check the same day you deposit it. But some banks make you wait much longer than others.

If you've ever deposited a large check in your account, then waited day after day for the money to become available for you to draw on, you know how frustrating the check-clearing process can be for banking customers.

It's not as if bounced checks were a major threat to the banking system. Almost 40 billion checks are written in the U.S. each year. All of them must "clear"—the checks, and the funds they represent, must shuttle between the banks where they are deposited and the banks on which they are drawn. In most cases, the checks clear without problems. About 1 percent of those checks are returned, usually for insufficient funds.

## Is this hold necessary?

With the risk of bounced checks relatively small, why don't banks credit your account with the value of deposited checks right away? Banks justify their often-lengthy hold policies by asserting that the returned checks could result in a large monetary loss to the bank if they are not collected. Yet, in New York, the one state that currently limits how long banks can make customers wait for their funds, banks don't seem to have been hurt. According to New York Banking Superintendent Vincent Tese, 90 percent of the state's banks experienced no losses from bounced checks at all in the three months ending in June 1984. For banks that did have losses, the average loss from all bounced checks combined was \$2400. It's also worth noting that banks can and do insure themselves against loss from bad checks.

When banks do put a hold on a check, it is usually a check for \$100 or more, drawn on a bank outside the locale where the check is deposited. Smaller checks (which constitute about 80 percent of checks written) are routinely available for withdrawal immediately or within a day or two of deposit.

Banks allow you access to your funds in a designated number of business days. With most banks, that number is fixed, regardless of how soon the bank itself gets the use of the funds—which is typically within a day or two of deposit. When banks count up the number of business days for check-clearing purposes, they exclude the day the deposit is

made. So, if you deposit a check on Monday and the check has a one-day hold on it, the money would be available for your use at the start of the banking day on Wednesday. Saturdays and Sundays don't count, even if the bank is open for business. So, an eight-day hold on a Monday deposit ordinarily means funds don't become available until the opening of business on Friday of the following week.

If you put a deposit into an automated teller machine during a bank's banking hours, the business days usually run just as if you'd given your deposit to a teller within the bank. But if you make a deposit after banking hours, the bank will usually treat your deposit as if it had been made on the following banking day.

## The turtle express

A major reason for the delays consumers experience is an antiquated system of clearing checks. When you deposit a check, your bank can speed the check by various means (including private courier services) to the originating bank in a few days at most.

If the account does not have the required amount available, the check is marked "insufficient funds" and must be returned to your bank. At this point, the bottleneck develops. The return trip is much slower than the first trip—checks sometimes travel by regular mail, for example. Bankers say that speeding up the return trip would in many cases cost the banks a good deal of money, because expensive new equipment would have to be installed.

Perhaps so. But maybe the banks just don't have a strong reason to change the present system. Congressman Fernand St. Germain (D., R.I.), chairman of the House Banking, Finance and Urban Affairs Committee, summed it up this way: "While the depository institutions hold the deposit uncredited, the customer writes checks—many of which are marked 'insufficient funds' and socked with a \$10, \$15, \$20 fee. All the while the financial institution refuses to post the deposit, which is often hundreds of dollars in excess of the insufficient funds items. The institution has use of the 'float'—a profitable item—and at the same time collects a little extra in the form of returned-check fees from the cus-

tomers." In short, said St. Germain, it's "an all-win solution for the institutions, a sure loser for the customer."

## Pulling the stopwatch

Last spring, New York became the first state to pull a stopwatch on the banks. (See CONSUMER REPORTS, July 1984.) Under its regulations, these time limits apply to commercial banks, for checks up to \$2500:

- If the check is drawn on a bank in the local metropolitan area, the funds must be available within two business days.
- If the check is drawn on any bank in New York State, the maximum holding period is three business days.
- For out-of-state checks, the maximum is six business days.

Savings-and-loan institutions and credit unions are allowed slightly longer than commercial banks to make deposited funds available.

California banking officials have approved similar regulations, which may go into effect as soon as this fall.

Both the New York and California rules establish a one-day holding period on checks written by the Federal Government or the home-state government.

In both states, the usual time limits don't apply in certain special situations. The most common of those is a hold on checks deposited into a newly opened checking account.

Both the New York and California regulations require that banks disclose to consumers (on request) information about holding periods.

## Where's Uncle Sam?

In March, the major Federal banking agencies—the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Federal Home Loan Board, and the Comptroller of the Currency—asked banks to limit check-clearing delays, and to disclose voluntarily the amount of time it takes them to credit a depositor's account. Knowing that information, consumers are likely to prefer banks with shorter waits. Competition should bring down the average waiting time.

There is also Federal legislation pending. Two bills before the Congress are similar to the New York and California rules. The House bill, H.R. 5301, is spon-

sored by Representative St. Germain, with 131 co-sponsors. The Senate bill, which was folded into the pending Omnibus Banking Bill, was authored by Senator Christopher Dodd (D., Conn.). It passed the Senate in September and awaited action by the House, as this issue went to press.

### Recommendations

CU favors a Federal law establishing maximum check-holding periods, and requiring disclosure of banks' check-holding policies. Pending federal action, we

hope more states will follow the lead of New York and California. With or without a law, there are things you can do.

Be aware that banks in the same city may have widely varying policies on when the funds you've deposited become yours to use. The table below shows the recent funds-availability policies of the five largest commercial banks in each of six major cities.

If you deposit a lot of out-of-town checks, you may want to shop around for the bank in your area that has the shortest holding periods. You can often get a

copy of the bank's policy from a bank officer or teller. We suggest getting the information in writing. CU callers have gotten conflicting information on successive calls to the same bank.

Banks do sometimes make exceptions from their general rules. If you need access to funds quickly, talk with the bank manager about getting faster credit on a deposited check. Also, some banks will routinely give you immediate access to funds you deposit if you pledge another account (such as a savings account) at that bank as collateral. ■

## How long must you wait?

This table shows the maximum number of days it would customarily take each of 30 major banks to make funds available on a deposited check. The banks surveyed were the five largest commercial banks in each of six major cities. "0" means the funds are available immedi-

ately. "1" means funds are available the day after the deposit is made. "2" corresponds to a one-day hold on a check (see story). In all cases, a "day" means a business day. Data are from late August 1984, and are based on statements by officials of the listed banks.

Maximum number of days to clear checks drawn on:

Same bank [1]	Nearby bank [2]	Distant bank [3]
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### Boston

Boston Safe Deposit	0	3	3
Bank of New England	1	3	3
Shawmut Bank	2	4	7
State St. Bank & Trust	1	[2]	[3]
First of Boston	Refused to divulge policy.		

### Chicago

First National	0	2	3
Harris Bank	0	3	3
American National	0	3	3
Continental Illinois	0	6 [2]	8 [3]
Northern Trust	1	6	9

### Dallas

Interfirst Bank	0	2	3
Mercantile Bank	0	2	3
BancTexas	1	3	3
First City	1	1	4
Republic National	7	8 [2]	11 [3]

[1] Own bank, branch, subsidiary, or affiliate.

[2] 200 miles away.

[3] 1500 miles away.

Maximum number of days to clear checks drawn on:

Same bank [1]	Nearby bank [2]	Distant bank [3]
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### Los Angeles

Mitsui Bank	0	5	7
Union Bank	2	6	8
Lloyds Bank	1	5	11
First Interstate	5	11	11
Security Pacific	5	7	13

### New York

Chase Manhattan	2	4	7
Manufacturers Hanover	2	4	7
Irving Trust	2	4	7
Citibank	2	5	9
Chemical Bank	1	3	11

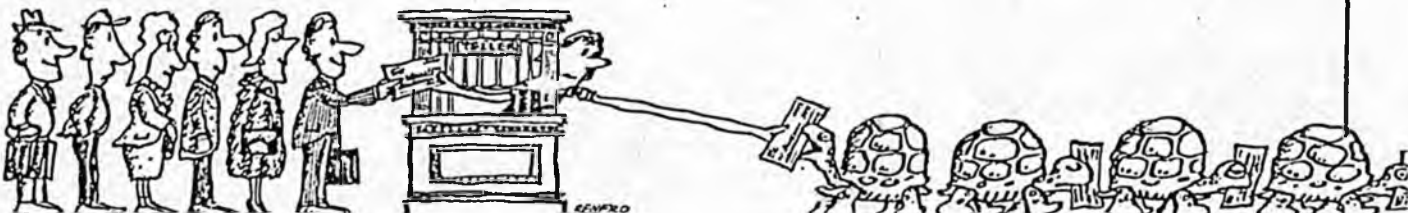
### San Francisco

Bank of California	1	3	3
Bank of America	0	2	4
California First	2	5	10
Wells Fargo	3	7	11
Crocker National	0	11	13

[1] Customer given credit when bank gets funds.

[2] Six days in state of Illinois; eight days outside state.

[3] Eight days in Dallas/Ft. Worth area; 11 days elsewhere.



## CU's director elected head of worldwide consumer group

Consumers Union does not stand alone. We have 127 allied organizations in countries around the world.

A nexus for these far-flung consumer groups is the International Organization of Consumers Unions (IOCU), founded in 1960 to protect consumers' interests worldwide through research, information, and education.

Consumers' needs vary around the globe. Shopping for specials at the supermarket is important for many people in the industrialized West. But for many in the Third World, finding adequate food at any price is the issue.

Responding to the

disparate needs of consumers around the world is a challenge for IOCU and its leaders. In December, CU's Executive Director, Rhoda H. Karpatkin, was elected president of IOCU (she had previously been vice president), and took on an increased measure of that challenge.

New priorities for the next three years, Karpatkin said, include: combating the promotion of smoking worldwide; strengthening consumer-education programs for young people; accelerating consumer-organizing efforts in Africa; and encouraging the development of consumer organizations in Latin America. IOCU will continue to work actively with three global citizens' networks—the Pesticide Action Network, Health Action International, and the International Baby Food Action Network—as well as with Consumer Interpol.

## New help for Medicare patients

As many older people know only too well, Medicare doesn't take care of medical expenses in full. For example, a surgeon might charge a woman \$1800 to perform cataract surgery. Medicare will pay 80 percent of the "approved fee," but the approved fee may be only \$1300. So Medicare would pay only \$965 (80 percent of \$1300, minus a \$75 deductible). The woman must pay the remaining \$835 herself, unless she has other health insurance.

Only about 20 percent of the nation's doctors have agreed to "accept assignment"—that is, to take the Medicare-approved fee as payment in full for their services. Yet these doctors perform more than half of all medical procedures done on patients eligible for Medicare. Clearly, older people on tight budgets are seeking them out.

To help America's 26 million senior citizens locate these doctors, the Health Care Finance Administration, the agency that administers Medicare, recently published the "Medicare Participating Physician/Supplier Directory," a regional listing of doctors who accept assignment. Reference copies are available at senior-citizen centers and Social Security offices.

All doctors listed in the directory have agreed to accept assignment. But doctors who aren't listed still have the option of accepting assignment on a case-by-case basis. So even if your doctor isn't listed in the directory, it may pay to ask if he or she will accept assignment in your case.



## FOLLOW UP

**The 'hold' on checks.** Several banks have protested our November report ("When Is It Your Money?") on the delays consumers face in getting access to funds they have deposited.

RepublicBank Dallas, formerly Republic National, says that the numbers originally furnished to us for our table were incorrect. It says funds are normally available immediately on checks drawn on its own affiliates, within three days for other local banks, and within seven days for out-of-area banks.

Wells Fargo Bank in San Francisco says that its maximum hold periods, at the time CU did its survey, were one day shorter than those we gave.

Republic and Wells Fargo are also among several banks that say they almost never make consumers wait for their money, making funds available on the next business day in more than 99.6 percent of cases.

Neither the Federal Reserve Board nor the American Bankers Association could provide us with nationwide-average figures on the percentage of checks subject to holds. But Senate

testimony indicates that from 13 to 25 percent of consumers have had a problem with the hold on checks.

On October 1, California joined New York in imposing limits on the time banks can take to make customers' checking-account funds available. The rules require banks to disclose their funds-availability schedules by notifying customers in writing.

**Charge cards.** In our January report on charge cards, CU listed five banks that said they issued low-rate credit cards to residents of any state. The information was obtained in a telephone survey of 133 bank credit-card centers in which a CU reporter called anonymously as a potential applicant. Before going to press, CU updated and double-checked the information for the top-rated banks, again anonymously.

Some of our banks' sources were apparently in error, however.

Several readers have told us that three of the five banks listed—Rainier National, Comerica Midwest, and Central National Bank—would not issue

cards outside their main service areas. So we checked back again, this time in "on the record" interviews. Here is what we found:

Rainier National, which boasts a 15.5 percent rate, will issue a card to residents of any state—provided there is already some sort of relationship between bank and applicant, such as a certificate of deposit. Otherwise, only residents of 10 western states—Alaska, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming—can get a Visa card from Rainier. Some of our readers who applied for a card from Rainier National had their applications forwarded to The Chase Manhattan Bank in New York, which charges 19.8 percent interest on Visa cards. Thanks, but no thanks.

Comerica Midwest (16.9 percent) will issue cards only to residents of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. Central National Bank will issue cards only in Ohio.

The central point of our report—that you can save money by shopping for your charge card—remains valid.

## EXHIBITS

1. Request for Attorney General's Opinion - April 26, 1968.
2. Attorney General's Opinion - June 24, 1968.
3. House Journal page 246 - Letter of Intent - February 17, 1968.
4. Definition and characteristics of checks - Excerpts from "The Law of Bank Checks" by Henry J. Bailey - Fourth Edition - 1969.
5. Definitions from "The Encyclopedia of Banking and Finance" by Munn and Garcia - Seventh Edition - 1973.
  - A. Bank Draft - page 76.
  - B. Cashier's Check - page 173.
  - C. Certified Check - pages 179-180.
  - D. Check - page 182.
  - E. Draft - pages 282-283.
  - F. Federal Reserve Check Collection System - pages 343-345.
  - G. Negotiable - page 626.
  - H. Negotiable Instruments - page 627.

**EXHIBIT**

**1.**

HB 365

FORM SA-18  
125.5M 8/67

**MEMORANDUM**

**State of Alaska**  
DEPARTMENT OF COMMERCE

TO:  OFFICE OF ATTORNEY GENERAL  
G. Kent Edwards  
Deputy Attorney General

DATE : April 26, 1968

FROM: W. W. Fritz  
Director of Insurance

SUBJECT: HOUSE BILL 365  
"Negotiable Bank Check Payable On Demand"

We are requesting your opinion on House Bill 365 that passed both the House and the Senate and has been signed by the Governor. A copy of the Bill is attached hereto for your information.

We are specifically requesting your interpretation of the term "negotiable bank check payable on demand." The use of the word "bank" in the Bill needs clarification. The original Bill as submitted called for payment by Cashier's Check or Certified Check.

It is specifically requested that a determination be made as to whether the words "negotiable bank check payable on demand" means a check issued by a bank in the form of either a Cashier's Check or some other instrument made by the bank.

Please rush your opinion as I must notify all of the insurance companies immediately.

Enclosures - 2  
WWF:hc

EXHIBIT  
2.

FORM 3-18  
125.51 8/67

MEMORANDUM

State of Alaska <sup>1/11</sup> 365

TO:

Department of Commerce

Attn: Mr. W. W. Fritz  
Division of Insurance

DATE : June 24, 1968

FROM:

G. Kent Edwards  
Attorney General

SUBJECT: House Bill No. 365  
"Negotiable Bank Check  
Payable on Demand"  
Our File No. COM-129

By: Vernon L. Snow  
Assistant Attorney General

Reference is made to your memorandum dated April 26, 1968, requesting our opinion as to the meaning of the term "negotiable bank check payable on demand" used in House Bill No. 365.

You state that the original bill read "Cashier's check or certified check". The Legislature amended the wording of the bill to read "negotiable bank check payable on demand".

Enclosed herewith is a xerox copy of Black's Law Dictionary covering the definition of "bank check" and "checks". You will note that the dictionary states under "bank check" "See 'check'". The definition of "check" in that dictionary does not lend much help in determining the meaning of the term "negotiable bank check". However, it is noted that the following statement is made regarding "check" and "draft":

"The term 'check', within the ordinary meaning of that term includes 'draft', the only distinction being that in a draft the drawer is a bank, while in the ordinary check the drawer is an individual. Leach v. Mechanics' Sav. Bank, 202 Iowa 899, 211 NW 506, 508, 50 A.L.R. 388."

Bank check is defined in 11 Am. Jur. 2d., Bills and Notes, §17, p. 47, as follows:

"The term 'bank check' means nothing more than 'check'. It merely designates a check which is drawn on a bank and thus is generally tautological, although it may be used to distinguish checks for money from such things as baggage checks, or from some travelers' checks which are not always drawn on a bank."  
(Emphasis added)

In 10 C.J.S., Bills and Notes, §5, p. 409, the following reference is made to a "bank check":

Mr. W. W. Fritz

June 24, 1968

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"The phrase 'bankers check' has no place in legal or financial terminology, it has been suggested; but the popular significance of the term is a check drawn by a banker, as distinguished from a bank check which may be drawn on the bank by anybody. . . ." (Emphasis added.)

The above language was approved in the case of Banker of M W of A v. Harrison, 62 S.W. 2d 486, (Mo. App. 1933). Though C.J.S. does not specifically define "bank check" their treatment of it definitely implies a definition akin to that given by Am. Jur. 2d, in that a "bank check" means nothing more than an ordinary check.

5 Words and Phrases, p. 175, cites two cases under the word bank check, neither of which are very helpful. No definition is given in the case of German Nat. Bank v. Beatrice, 63 Neb. 246, 88 N.W. 480 (1901). Only a statement is contained stating that "bank checks in this Country, are regarded as inland bills of exchange, for the purpose of presentment and demand and notice of dishonor". However the facts of the case indicate that an ordinary check was at issue.

In the case of Byrd Printing Co. v. Whitaker Paper Co., 135 Ga. 865, 70 S.E. 798 (1911) again a definition of bank check is absent but the case involved an ordinary check and the court stated as follows:

"A bank check is a contract in writing by the execution and delivery of which the drawer contracts with the payee that the bank will, on presentation, pay to him or his order the amount designated, and is not a mere request upon a third person to pay, . . ."

A bank check is in no sense of the word either a "cashiers check" or a "certified check". Both of these terms are defined separately by Am. Jur., and an inspection of their definitions clearly demonstrates that they are entirely different animals with different legal consequences than the ordinary bank check. 10 Am. Jur. 2d, Banks, §10, p. 518 defines a cashier's check as follows:

"A cashier's check is a bill of exchange, drawn by the bank upon itself, and is accepted by the act of issuance. While the only apparent basic or factual difference between a cashier's check and the ordinary check is that the ordinary check is drawn on one other than the drawer, while in a cashier's check both the drawer and the drawee are the same, there are certain

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differences, some radical, in the incidents and consequences of the two types of checks. A cashier's check is a primary obligation of the bank, rather than the depositor, as in the case of an ordinary check, and a promise to pay which ordinarily cannot be countermanded. It is issued by the authorized officer of a bank, directed to another person, evidencing the fact that the payee is authorized to demand and receive from the bank, upon presentation, the amount of money represented by the check. Cashiers' checks, from their peculiar character and general use in the commercial world, are regarded substantially as the money which they represent, a rule that is not extended to ordinary checks of the depositor drawn on his bank."

11 Am. Jur. 2d, Bills and Notes, §17, p. 47, defines a certified check as "a check upon which the drawee bank has assumed an obligation by assuring that the drawer has funds and that such funds have been set apart for the satisfaction of the check". 10 Am. Jur. 2d, Banks §588, p. 556, clearly pointed out that a bank check and certified check are not one and the same, when the commentator stated as follows:

"In a certain broad sense the certification of a check is equivalent to a certificate of deposit, inasmuch as the deposits of the drawer to the amount of the check are set aside or appropriated for the holder thereof. The certification of a bank check is not, however, in all respects like the making of a certificate of deposit; it is a *thing sui generis*, and its effect depends upon the person who, in his own behalf, or for his own benefit, induces the bank to certify the check."

In conclusion, the definition and use of the term bank check is identical with the term check, and does not imply that a check is to be treated as either a cashier's, or certified check. This is also in keeping with the intent of the legislature, to halt the use of the insurance sight draft (since an ordinary check is in no sense of the word a sight draft - said draft requiring an additional acceptance by the drawer - See page 246 of House Journal for February 17, 1968), without requiring the rather restrictive cashier's or certified check.

We trust the foregoing answers your question, If not, please advise.

GKE:VLS:agm

Enclosures as indicated

to make loans, and to issue its promissory notes, (designed to circulate as money, and commonly called "bank-notes" or "bank-bills,") or to perform any one or more of these functions. *State v. Wagner*, 202 Iowa, 759, 210 N.W. 901, 902; *People v. Bartow*, 6 Cow.N.Y. 290; *Dearborn v. Northwestern Savings Bank*, 42 Ohio St. 617; *In re Prudence Co.*, D.C.N.Y., 10 F.Supp. 33, 36.

An institution, usually incorporated with power to issue its promissory notes intended to circulate as money (known as bank notes); or to receive the money of others on general deposit, to form a joint fund that shall be used by the institution, for its own benefit, for one or more of the purposes of making temporary loans and discounts; of dealing in notes, foreign and domestic bills of exchange, coin, bullion, credits, and the remission of money; or with both these powers, and with the privileges, in addition to these basic powers, of receiving special deposits and making collections for the holders of negotiable paper, if the institution sees fit to engage in such business. *State of Kansas ex rel. Boynton v. Hayes*, C.C.A.Kan., 62 F.2d 597, 600. The term "bank" is usually restricted in its application to an incorporated body; while a private individual making it his business to conduct banking operations is generally denominated a "banker." *Hobbs v. Bank*, C.C.A. N.Y., 101 F. 75, 41 C.C.A. 205; *Wells, Fargo & Co. v. Northern Pac. R. Co.*, C.C.Or., 23 F. 469.

The house or place where the business of banking is carried on.

Banks in the commercial sense are of three kinds, viz.: (1) of deposit; (2) of discount; (3) of circulation. Strictly speaking, the term "bank" implies a place for the deposit of money, as that is the most obvious purpose of such an institution. Originally the business of banking consisted only in receiving deposits, such as bullion, plate, and the like, for safe-keeping until the depositor should see fit to draw it out for use, but the business, in the progress of events, was extended, and bankers assumed to discount bills and notes, and to loan money upon mortgage, pawn, or other security, and, at a still later period, to issue notes of their own, intended as a circulating currency and a medium of exchange, instead of gold and silver. Modern bankers frequently exercise any two or even all three of those functions, but it is still true that an institution prohibited from exercising any more than one of those functions is a bank, in the strictest commercial sense. *Oulton v. German Sav. & L. Soc.*, 17 Wall. 118, 21 L.Ed. 618; *Millikan v. Security Trust Co.*, 118 N.E. 568, 569, 187 Ind. 307; *Rev.St.U.S. § 3407* (12 USCA § 561).

—Bank-account. A sum of money placed with a bank or banker, on deposit, by a customer, and subject to be drawn out on the latter's check. The statement or computation of the several sums deposited and those drawn out by the customer on checks, entered on the books of the bank and the depositor's passbook. *Gale v. Drake*, 51 N.H. 84.

—Bank bill. Same as bank note. *Eastman v. Com.*, 4 Gray (Mass.) 416. See Bank note, *infra*.

—Bank book. A book kept by a customer of a bank, showing the state of his account with it. See Pass-book.

—Bank cashier. A chief executive officer and general agent through whom financial operations of bank are conducted. *Hamilton Nat. Bank of Chattanooga, Tenn., v. Lerman*, 229 Ala. 363, 157 So. 75.

—Bank charges. This term in an action on a bill of exchange is equivalent to expenses of noting, and may be especially endorsed as a liquidated demand; [1893] 1 Q.B. 318.

—Bank check. See Check.

—Bank credit.—A credit with a bank by which, on proper security given to the bank, a person receives liberty to draw to a certain extent agreed upon. In Scotland also called a cash account. Cent. Dict.

—Bank depositor. One who delivers to or leaves with a bank a sum of money subject to his order. *Wharton v. Poughkeepsie Sav. Bank*, 31 N.Y.S.2d 311, 313, 262 App.Div. 598.

—Bank draft. A check, draft, or other order for payment of money, drawn by an authorized officer of a bank upon either his own bank or some other bank in which funds of his bank are deposited. *Polotsky v. Artisans Sav. Bank, Del.*, 150 A. 791, 792, 7 W.W.Harr. 142.

—Bank note. A promissory note issued by a bank or banker authorized to do so, payable to bearer on demand, and intended to circulate as money. *Townsend v. People*, 4 Ill. 323; *Low v. People*, 2 Park.Cr.R. (N.Y.) 37. See, also, Banker's note.

In the early history of banks, their notes were generally denominated bills of credit. *Briscoe v. Bank of the Commonwealth of Kentucky*, 11 Pet. 257, 9 L.Ed. 709.

—Bank stock. Shares in the capital of a bank; shares in the property of a bank. In England the term is applied chiefly to the stock of the Bank of England.

—Bank teller. See Teller.

—Bank in failing condition. Under some statutes, an insolvent bank. *Hanson v. State*, 160 Ark. 329, 254 S.W. 691, 694.

—Bank of circulation. One which issues bank notes payable to bearer. *Dunn v. State*, 13 Ga. App. 314, 79 S.E. 170, 171. See Bank of issue, *infra*.

—Bank of deposit. A savings bank or any other bank which receives money on deposit. *Dunn v. State*, 13 Ga.App. 314, 79 S.E. 170, 171.

—Bank of discount. One which lends money on collateral or by means of discounts of commercial paper. *Dunn v. State*, 13 Ga.App. 314, 79 S.E. 170, 171.

—Bank of issue. One which, pursuant to authority conferred by its charter, issues its own notes intended to circulate as money. *Millikan v. Security Trust Co.*, 187 Ind. 307, 118 N.E. 568, 569.

—Joint-stock banks. In English law. Joint-stock companies for the purpose of banking. They are regulated, according to the date of their incorporation, by charter, or by 7 Geo. IV, c. 46; 7 & 8 Vict. cc. 32, 113; 9 & 10 Vict. c. 45, (in Scotland and Ireland;) 20 & 21 Vict. c. 49; and 27 & 28 Vict. c. 32; or by the "Joint-Stock Companies Act, 1862," (25 & 26 Vict. c. 89.) *Wharton*.

—Savings bank. An institution in the nature of a bank, formed or established for the purpose of receiving deposits of money, for the benefit of the

188 S.W. 815, 816; State v. Heath, 115  
379, 151 N.E. 241, 245. Particularly used  
reference to the control or supervision of  
department, bureau, office, or person over

in initiative statute, to compare names of signer  
against official registration list. Halgren v.  
Utah, 16, 63 P.2d 550, 551.

**Check**. A commercial device intended for use  
temporary expedient for actual money, and  
usually designed for immediate payment, and  
circulation. Kennedy v. Jones, 140 Ga. 302,  
109, 1070, Ann.Cas.1914D, 355; Merchants'  
Bank v. Bank, 10 Wall. 617, 19 L.Ed. 1008.

for payment of money. Wright v. Loring, 351  
181 N.E. 835, 836. An order for payment of money.  
Rochester Trust & Safe Deposit Co., 209 N.Y.  
2d 537, 539, 52 L.R.A.N.S., 302, Ann.Cas.1915A,  
1915, 1070, 1071, 1072, 1073, 1074, 1075, 1076,  
1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084,  
1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092,  
1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100,  
1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108,  
1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116,  
1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124,  
1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132,  
1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140,  
1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148,  
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HB  
365

This bill seeks to prevent the delay, inconvenience, financial loss and frustration experienced by insurance claimants when payment by the insurance company is made in the form of an instrument not readily exchangeable for cash. The intent is to prohibit the use of what is commonly called a "sight draft", still used by some insurance companies, which requires an additional "acceptance" by the company before actual payment is made.

/s/ Tom Fink  
Tom Fink, Chairman"

The Judiciary Committee has had HOUSE BILL NO. 365 (payments of judgments and settlements) under consideration and a majority of the members of the committee recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 365 and that COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 365 do pass. The report was signed by Mr. Fink, Chairman, and concurred in by Messrs. Fink, Fritz, Metcalf, Moran, Tillion, Hensley and Brady.

HOUSE BILL NO. 365 was referred to the Commerce Committee.

CONSIDERATION OF THE CALENDAR

SECOND READING OF HOUSE RESOLUTIONS

HJR 55 HOUSE JOINT RESOLUTION NO. 55 (former Naval Base at Dutch Harbor) was read the second time with the State Affairs Committee report (page 213 of the journal).

Mr. Holm moved and asked unanimous consent that HOUSE JOINT RESOLUTION NO. 55 be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

HOUSE JOINT RESOLUTION NO. 55 was read the third time.

The question being: "Shall HOUSE JOINT RESOLUTION NO. 55 pass the House?" The roll was called with the following result:

Yeas: 32 - Anderson, Balone, Banfield, Beirne, Boardman, Bradner, Brady, Cessnun, Fink, Fritz, Getman, Guess, Haugen, Hensley, Hohman, Holm, Metcalf, Miller, Moore, Moran, Moses, Orbeck, Powell, Ray, Sassara, See, Smith, Strandberg, Tillion, Wiggins, Wright, Young.

Nays: 0 -

Excused: 5 - Borer, Sackett, Simpson, Stevens, Westdahl.

Absent: 3 - Harris, Kerttula, McGill.

And so, HOUSE JOINT RESOLUTION NO. 55 passed the House and was referred to the Chief Clerk for engrossment.

SECOND READING OF HOUSE BILLS

HB 468 HOUSE BILL NO. 468 (reports of injuries sustained by fishermen) had been held in second reading until this time.

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THE  
LAW OF BANK CHECKS

By HENRY J. BAILEY  
*of the Massachusetts and New York Bars*  
*Professor of Law*  
*Willamette University College of Law*  
*Salem, Oregon*

FOURTH EDITION  
*Revised and Enlarged*

THE BANKING LAW JOURNAL  
BOSTON  
1969

official text and Comments as last revised in 1966. Some states have not enacted all the revised Code provisions.<sup>18</sup>

The Code was originally presented for enactment in a version drafted in 1952 and was enacted in that version in Pennsylvania. Several modified versions were presented by the Code sponsors from time to time, the last having been in 1966. Most states including Pennsylvania, have enacted the Code as it appears in the 1962 Official Text. The 1966 text makes few changes from the 1962 text.

By the beginning of 1969, the Code was enacted in 49 of the 50 states, as well as in the District of Columbia and the Virgin Islands. As of that time, Louisiana is the only state that has not enacted the Code.

§ 1.5. Definition and characteristics of checks. Four basic types of negotiable instruments are recognized in the Code. They are (a) a draft or bill of exchange if the instrument is an order to pay money, (b) a check if the instrument is a draft drawn on a bank and payable on demand, (c) a certificate of deposit if the instrument is an acknowledgment of the receipt of money with an engagement to repay it, and (d) a note if the instrument is a promise other than a certificate of deposit.<sup>19</sup>

While notes and certificates of deposit are important to banks, they will not be dealt with in this volume except incidentally. On the other hand, a number of cases referred to in this text involved notes; the law enunciated in such cases may carry over into the law of checks. With respect to drafts or bills of exchange, many of the legal principles relevant to such instruments apply equally to checks, since they are drafts of a special kind.

It should be recognized that a check is a draft or bill of exchange under both the Code and the Negotiable Instruments Law. Under other statutes, a check has also been recognized as a bill of exchange. Thus a statute of limitations applicable to the time of commencement of an action on "bills of exchange" has been held applicable to checks,<sup>20</sup> a statute providing that a married woman

18. A so-called 1952 version of the Code was enacted in Pennsylvania, but later revised. The Code draftsmen developed revised versions of the Code in 1957 and 1958, and there was some revision also in 1962. Most states have the Code as revised through 1962. The 1966 revisions, relatively minor, are set forth in Re-

port No. 3 of the Permanent Editorial Board for the Uniform Commercial Code.

19. U.C.C. § 3-104(2). A bill of exchange is defined in N.I.L. § 126, a note in N.I.L. § 184 and a check in N.I.L. § 185. Such definitions are comparable to those of U.C.C. § 3-104(2), although in different language.

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may be sued jointly with her husband on a bill of exchange has been held applicable to a suit on a check,<sup>21</sup> and a criminal enactment proscribing the forging of an acceptance of a bill of exchange was applied in a case involving a forged certification of a check.<sup>22</sup> And it has been held that an instrument labelled a "draft" given by an insurance company to a liability claimant against an insured, payable through a named bank to the order of such liability claimant and his attorneys, is a check.<sup>23</sup> However, in some instances under other laws, a check may not necessarily be a bill of exchange.<sup>24</sup>

While it is undoubtedly correct to say that a check is a draft or a bill of exchange, checks differ from the other instruments in certain important particulars. A check is a demand instrument drawn on a bank. A draft drawn on a business house is not a check.<sup>25</sup> In many states, a note or accepted draft stated to be payable at a bank is equivalent to an order on the bank to pay the amount thereof for the account of the principal debtor,<sup>26</sup> but it does not follow that such a note or draft has all the attributes of a check.<sup>27</sup> There is also an important distinction between checks and other drafts with respect to requirements of presentment and notice of dishonor, as well as with respect to the right of the holder to have the instrument accepted.

It should be noted that, under the Code, a check must contain an unconditional order to pay a sum certain in money.<sup>28</sup> However, that requirement has been held not to mean that payment by means

20. *Rogers v. Durant* (1891) 140 U.S. 298, 11 S.Ct. 754, 35 L.Ed. 481.

21. *Wilderman v. Rogers* (1886) 66 Md. 127, 6 A. 588.

22. *People v. Somsy* (1920) 46 Cal. App. 377, 189 P. 458, 37 B.L.J. 561.

23. *Baucum v. Great American Ins. Co.* (Tex. Civ. App., 1963) 364 S.W.2d 713, 80 B.L.J. 647. See also *Grohsky v. Atlas Assurance Co.* (Kan. 1965) 408 P.2d 697, 83 B.L.J. 366. Under the Code, such an instrument is clearly not a check where it is drawn on a nonbank drawee but payable "through" a bank. See U.C.C. §§ 3-104(2)(a) and (b), 3-120.

24. See *Townsend v. State* (1893) 92 Ga. 732, 19 S.E. 55.

25. *Amsinck v. Rogers* (1907) 189 N.Y. 252, 82 N.E. 134.

26. U.C.C. § 3-121, Alternative A

so provides. U.C.C. § 3-121, Alternative B, provides that a note or acceptance payable at a bank is not of its: If an order or authorization to the bank to pay it.

27. An instrument payable at a certain bank is not a check within the scope of N.I.L. § 186 requiring presentment within "a reasonable time." *Binghamton Pharmacy v. First Nat. Bank* (1915) 131 Tenn. 711, 170 S.W. 1038, 2 A.L.R. 1377.

But see *Mt. Vernon Nat. Bank v. Canby State Bank* (1929) 129 Or. 36, 270 P. 262, 63 A.L.R. 1133, 46 B.L.J. 560, where it is stated that a draft on the drawer payable at a named bank is a check.

28. U.C.C. § 3-101(2)(b) states that a check is a draft drawn on a bank and payable on demand. An "order" is a direction to pay and

of a check is absolutely unconditional. As between the original parties, payment is conditional<sup>29</sup> and a defense of failure of consideration may be asserted by the drawer of the check. The requirement that the check be unconditional applies only to the matter of the form of a negotiable instrument.<sup>30</sup>

§ 1.6. Particular kinds of checks. A cashier's check is simply a bill of exchange or draft drawn by a bank upon itself and is accepted by the act of issuance.<sup>31</sup> A bank which issues a cashier's check impliedly authorizes the purchaser thereof to deliver or withhold delivery to the payee of the check. The payee of a cashier's check cannot be a holder in due course thereof where he takes it from an intermediary under circumstances amounting to notice to the payee of bad faith on the part of the intermediary, and such payee is deemed acting in bad faith. Prior to valid delivery, the purchaser of a cashier's check may cause it to be cancelled.<sup>32</sup>

A bank draft is a bill of exchange drawn by an authorized officer of a bank on either his own bank or a correspondent bank, issued at the solicitation of a person purchasing it.<sup>33</sup> A banker's check is one in which the drawer is a banker, or the duly authorized agent of a bank, drawn on funds either in the bank of which he is an officer or agent or on funds in a correspondent bank in which his own bank has credit.<sup>34</sup>

Other forms of checks in use to at least some extent include so-called non-negotiable counter-checks for use by a depositor who withdraws funds from his own account in the bank.<sup>35</sup> Also used on occasion is a so-called "postcard" check or check on a postcard which may be filled in and mailed.<sup>36</sup>

§ 1.7. Bank money orders and personal money orders. In recent years use has been made by banks and others of so-called "bank money orders" and "personal money orders" which have

must be more than an authorization or request. U.C.C. § 3-102(1)(b).

29. U.C.C. § 3-802(1)(b). See § 1.18, *infra*.

30. *Mansion Carpets, Inc. v. Marloff* (1965) 29 App. Div. 2d 947, 268 N.Y.S.2d 298.

31. *State v. Tyler Co. Bank* (Tex., 1925) 277 S.W.2d 625, 43 B.L.J. 290; *Ross v. Peck Iron & Metal Co.* (C.A., Va., 1959) 264 F.2d 262, 70 B.L.J. 774.

32. *Burke v. Mission Bay Yacht Sales* (1963) 214 Cal. App. 2d 723, 29 Cal. Rptr. 685, 80 B.L.J. 818.

33. *Kohler v. First Nat. Bank* (1930) 157 Wash. 417, 289 P. 47.

34. *Holland v. Mutual Fertilizer Co.* (1911) 8 Ca. App. 714, 70 S.E. 151.

35. *Bailey, Modern Uniform Commercial Code Forms*, No. 30.7.

36. *Bailey, Modern Uniform Commercial Code Forms*, No. 30.9.

many character- regarded as ch orders issued ar express money cashier's check, any number of for postal mon bank money ord bank, and they issuing bank.<sup>38</sup>

Another form chants and other While bank mon bank, as indicat resemblance to for the name of chaser (with hi time of issue a Such an instrum the original of v pleted.<sup>40</sup> The se record copy or bank as its reco any place by a recent years use nearly resembles check.<sup>41</sup>

37. A "money o credit instrument c ment of money to which provides for venient means of r persons not having There are three p order: the remit payee, and the dr cyclopedia of Banl Bankers Publishing 1962).

38. *Bailey, Modern Commercial Code Fo* 30.13. See also N tion for Bank Mon

39. The "Regist is a copyrighted offered to banks

EXHIBIT 5. A

### BANK DEBITS

proxy nor any other single measure can be perfectly indicative of monetary trends and therefore a guide to monetary policy. But the bank credit proxy is held in high regard by the Board's chief of the Banking Section of the Division of Research and Statistics: "The availability of a sensitive current measure of bank credit trends, which the proxy represents, has contributed significantly to improving the factual foundation for the discussion, formulation, and implementation of monetary policy."

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**BANK DEBITS** The Division of Research and Statistics of the Board of Governors of the Federal Reserve System announced in July 1972 a revision of the monthly data prepared for bank debits and for deposits for the 233 Standard Metropolitan Statistical Areas (SMSA's) reporting in the bank debits, deposits, and deposit turnover series. This revision, the first major change since March 1967, incorporated the following statistical improvements:

1. Seasonal adjustments. Trading-day adjustments were recalculated and applied to the debits data, and seasonal adjustments have been recalculated and applied to the debits data, and seasonal adjustments have been recalculated and applied to both debits and deposits data for all SMSA's on the Board's national series.

2. SMSA coverage. The series were revised to reflect major changes that had been made in the boundaries of SMSA's since the previous revision.

Data are shown for all 233 SMSA's and for 232 excluding New York City; for leading SMSA's — for New York City, and for six others combined — and for 226 excluding the leading ones. In addition to the figures they collect for the centers that appear in the national series published in the *Federal Reserve Bulletin* monthly, after public release, by the Board of Governors, some of the district Federal Reserve Banks collect and publish in their regional releases data for SMSA's and centers that are not in the national series.

The national figures for debits (at annual rates) and for end-of-month deposits are aggregates of seasonally adjusted SMSA totals prepared by the Federal Reserve Banks. The annual rate of turnover is calculated monthly from the aggregate of these debits and the average of two deposits figures — one for the current and one for the preceding month-end.

The account coverage of the debits series, which measures the extent to which depositors are using their checking accounts, continues to include debits to demand deposit accounts of individuals, partnerships, and corporations (IPC deposits), and of States and political subdivisions; it excludes, however, debits to U.S. Government, interbank, and time deposit accounts.

**Summary.** — As indicated, bank debits make possible the estimates of turnover of demand deposits, and hence of velocity of demand deposits, which are the largest single components quantitatively, of the "Money Supply". Multiplied by the velocity factor, however, the aggregates of demand deposits provide what might be termed Effective Money Supply, reflecting both the aggregate and the intensity of usage of demand deposits. In the exercise of Monetary Policy through affecting the Money Supply, Velocity is the most difficult factor to control: an increase in the Money Supply might be offset by decrease in Velocity, while a decrease in the Money Supply might similarly be offset by increase in Velocity.

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### BANK DEPOSIT

See BANK ACCOUNT, DEMAND DEPOSITS, DEPOSITS, TIME DEPOSITS.

**BANK DEPOSIT INSURANCE ACT** The name given to the Act of July 16, 1934, which extended to July 30, 1935 the temporary plan for insurance of bank deposits originally set up by the BANKING ACT OF 1933. Public Resolution of June 28, 1935 further extended the temporary plan for insurance of commercial bank deposits to August 31, 1935. Permanent deposit insurance was provided by the BANKING ACT OF 1935, approved August 23, 1935. On September 21, 1950 the "Federal Deposit Insurance Act" as such (64 Stat. 873; 12 U.S.C. 1811-1831) was made a separate independent law, with numerous amendments, representing its withdrawal from section 12B of the Federal Reserve Act as amended, which previously had carried the bank deposit insurance act and amendments.

### BANK DIRECTORS

See DIRECTORS.

### BANK DISCOUNT

**BANK DRAFT** A sight or demand draft, drawn by one bank as drawer upon another bank as drawee. Such an instrument is to be distinguished from a CASHIER'S CHECK.

Domestically, bank drafts purchasable at small fee by a bank's customers provide a highly acceptable instrument of DOMESTIC EXCHANGE. For example, "New York Funds" would be readily provided by the bank draft of an interior bank, drawn on its New York City correspondent bank, purchased by the interior bank's customer faced with the necessity of payment in New York City, as compared to local check.

In FOREIGN EXCHANGE, bankers' sight or demand drafts, drawn on balances maintained with foreign bank correspondents, provide a demand form of payment in the foreign currency concerned which may be available at "spot" rates if the distance involved permits quick air-mail arrival of the instruments.

See BANK ACCEPTANCE, DRAFT.

See BANK OCCUPATIONS, PERSONNEL, DEPARTMENT.

**BANK EQUIPMENT** As the result of Automation of bank operations and use of electronic equipment, equipment in the modernized bank may be classified in two categories, the conventional and the electronic.

Conventional bank equipment includes such manual, semi-automatic and automatic items as the following: adding machine, adding typewriter, addressing machine, annunciator, automatic typewriter, bookkeeping and billing machine, calculating machine, cash register, check cancellation machine, check endorsing machine, check protecting and writing machine, check sorter, check sorters (vertical, flat, and rotating), coin counters, folders, trays and wrappers, coupon cutter, dictaphone, dictation machine, duplicator, dry copier, endorsing machine, envelope sealing machine, files (lever, power, rotary, and visible), folding machine, letter opener, mailing machine, microfilm processor, mimeograph, multigraph, numbering machine, paper destroyer, perforating machine, photostat, posting machine, posting tray cabinets, proof machine, receipt machine, Recordak equipment, stamp aligning machine, tabulating equipment, telautograph, time dating stamp, time lock, time recording machine, transit machine, typewriters (manual, electric).

Electronic bank equipment includes electronic bookkeeping machines; MICR (Magnetic Ink Character Recognition) check equipment, including electronic reader-sorter and computer; electronic data processing equipment, including punched card tabulating equipment, sorting machine, tabulating and printing machine, and computer; TV bank protection units, including TV cameras; TV bank signature verifier; video tape recorder; tape lists; selective tape printers; on-line disk files; electronic accounting computer; data communication equipment.

Bank "equipment", comprehensive, includes all movable furniture and fixtures of the bank. By contrast, bank "premises" includes vaults, fixed machinery and equipment, parking lots owned adjoining or not adjoining the bank premises that are used by customers or employees, and potential building sites. Equipment expenses include normal and recurring depreciation.

Effective November 24, 1960, the supplement to Regulation D was amended to permit member banks to count all of their currency and coin as part of their required reserves; and effective the same date, the supplement was further amended to increase the reserve requirement against net demand deposits of banks not classified as central reserve or reserve city banks from 11% to 12%. Effective December 1, 1960, the supplement was also amended to reduce the reserve requirement for central reserve city banks against net demand deposits from 17 1/2% to 16 1/2%. Authority of the Board of Governors of the Federal Reserve System to classify or to reclassify cities as central reserve cities terminated effective July 28, 1962 (see below).

Counting vault cash toward required reserves by member banks also removed an inequity in comparison with non-member banks so permitted. Of the 47 States which have legal reserve requirements for commercial banks, the Economic Policy Commission of the American Bankers Association pointed out, 10 specifically require that part of the reserve be kept in cash form; and the other States have no specific vault cash requirement but allow full reserve credit for vault cash. Allowance of reserve credit for vault cash, it is felt, would encourage more rural banks to join the Federal Reserve System.

P.L. 86-114 (supra), which laws provided allowance of reserve credit for vault cash, also amended the Federal Reserve Act so as to change the minimum and maximum legal reserve requirements of member banks in reserve cities and central reserve cities; and to provide for termination of the classification "central reserve cities" on July 28, 1962. For details of major revision in 1972 of legal requirements against demand deposits, See RESERVES.

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**CASH TRADE** A transaction in securities, grain, real estate, etc., in which cash in full is paid for immediate delivery, possession, and title.

See FOR CASH.

**CASHIER** A term commonly applied to a person who receives and disburses money for a business. In banking, an officer who is responsible for the custody of the bank's assets and whose signature is required on all official documents. While other higher officers of a bank may delegate their authority, or act as "dummies," a cashier never does so, even in the largest banks. His duties vary according to the size of the bank. Usually he is the chief administrative officer and has direct charge of the bank's operations, and corresponds to the general manager in a mercantile or industrial establishment. Among large banks the duties of the cashier are so numerous that Assistant Cashiers are appointed to administer separate assigned functions and have authority to sign instruments in the same manner as the cashier.

**CASHIER'S ACCOUNT**

**CASHIER'S CHECK** A bank's own check; a check drawn upon a bank and signed by its cashier, or assistant cashier, being a direct obligation of the bank. Cashier's checks are issued to borrowers when loans are made in lieu of a deposit credit or actual cash, sold to customers for remittance purposes, and issued in payment of the bank's own obligations, money transfers, etc. When a cashier's check is issued it becomes a credit, and upon its return through the clearing house or otherwise, a debit to the cashier's account. Cancelled cashier's checks are preserved as vouchers in the bank's files.

insurance other than fire or life and marine insurance; and including such lines as automobile liability, workmen's compensation and accident and health, the three largest lines for volume, and miscellaneous lines such as automobile property damage, liability other than automobile, automobile collision, fidelity, surety, plate glass, steam boiler, etc.

See INSURANCE.

**CATS AND DOGS** An expression used to denote highly speculative securities. It is particularly applied to non-income bearing stocks of uncertain value; stocks acknowledged to be a gamble because the underlying properties are not yet developed, and which are worthless as bank collateral.

**CATTLE LOAN COMPANY** A company organized for the purpose of lending its credit to cattlemen for the purchase, raising, and marketing of cattle or other live stock, and referred to in the Federal Reserve Act as livestock loan companies. They are sometimes separate companies, but in most instances are affiliated with or owned or controlled by State or national banks, located at or near the large stockyards, or in producing centers. In many instances these institutions are connected with banks specializing in the livestock business, and use the same building and others. As affiliates, these companies are excepted from the restrictions contained in Section 23-A of the Federal Reserve Act as to loans and investments to affiliates or collateral loans on their obligations, the ordinary restrictions on loans and investments being applicable.

The function of a cattle loan company is to relieve the commercial banks from the burden of carrying cattle paper, which under normal circumstances amounts to millions of dollars. Very often these companies act as middlemen between cattlemen-borrowers and the ultimate investors, i.e., the banks in the large centers. Some classes of cattle paper are also eligible for rediscount and for market purchases by the Federal Reserve banks.

See CATTLE LOANS.

**CATTLE LOANS** Loans made for the purpose of financing the cattle industry, which includes the purchase or breeding, feeding, grazing, fattening, and marketing of cattle. They may be divided into three classes: feeder, stocker, and dairy loans. Feeder loans are made on beef steers ready of the last stage of feeding prior to their sale as finished beef. These loans range from 3 to 6 months' maturity. Stocker loans are made on cows for breeding purposes, and on young calves. They usually have a 6 months' maturity, subject to 3 or 4 renewals, and require about 50% margin. Dairy loans are made for the purchase of high grade cows and pure bred sires for the purpose of improving the dairy business. Their usual maturity is 6 months, subject to 4 or 5 renewals.

The procedure in making cattle loans is as follows: (1) application of the borrower; (2) sworn statement of the financial condition of the borrower; (3) inspection of borrower's cattle with reference to location, brands, number, approximate weight per head, etc.; (4) search of records to ascertain whether any liens against the borrower's real or personal property exist; (5) execution of chattel mortgage in which the market value is usually at least 20% above the amount of the loan; and (6) execution of the note.

Under Section 5200, par. (7) of the Revised Statutes, which contains limitations on loans by National banks (also applicable to State member banks) to any one person, obligations of any person in the form of negotiable instrument secured by shipping documents or instruments of title covering livestock or giving a lien on livestock, which are secured 11% by such collateral, are added to another 15% of capital and surplus in addition to the basic 10% of capital and surplus limitation. P.L. 86-251, enacted September 9, 1959, added a new sentence to this paragraph, similarly permitting National banks (and thus State member banks) to make loans up to 25% of capital and surplus (rather than up to 10% previously applicable general limitation) to dealers in dairy cattle when the obligations carry a full recourse endorsement or unconditional guaranty of the seller and receipt of the sale of dairy cattle.

See CATTLE LOAN COMPANY.

**CHEDULE** In Europe, where the warehouse receipt is issued in duplicate, the "receipt", also called the "chedule" copy, used in transfers or assignments, as compared with the "warrant" or "bulletin" copy used as collateral for loans. In the United States, the warehouse receipt is not so issued in duplicate.

See WAREHOUSE RECEIPT.

..... Bank .....  
No. .... New York, N.Y., ..... 19 .....

This certifies that there has been deposited in this bank the sum of ..... Dollars \$.....  
Payable to the order of .....  
on the ..... day of ..... 19 .....

with interest thereon at the rate of ..... per cent per annum, upon presentation and surrender of this Certificate at this Bank.

\_\_\_\_\_  
Authorized Signature

**CERTIFICATE OF INCORPORATION** The charter or franchise which the original incorporators of a company receive from the Secretary of State of the State of incorporation, legally empowering it to act as a corporation.

**CAPITAL STOCK.**  
A certificate of incorporation for each type of bank or trust company must be applied for from the proper authority. Application for a National bank charter is made to the Comptroller of the Currency. Organizing State banks and trust companies apply to the proper State authority known under different titles, e.g., Superintendent of Banks (New York), Commissioner of Banking (Massachusetts), Auditor (Illinois). A typical certificate of incorporation for all types of banking institutions contains the following information: (1) name of bank, (2) location, (3) capital and number of shares, (4) name, address, financial worth, and number of shares of each stockholder, and (5) that the certificate is made in order to take advantage of either the National or State banking laws. The certificate is executed in duplicate; one copy for the Comptroller of the Currency (or State banking department), and the other for the bank.  
See ARTICLES OF ASSOCIATION, ORGANIZATION CERTIFICATE.

**CERTIFICATE OF INDEBTEDNESS** A short term note or corporate or issued by a governmental body, representing floating indebtedness (current debt) or corporate certificate of indebtedness is merely an unsecured promissory note, the holder having a general creditor's recourse against the unpledged general assets. U.S. Treasury Certificates of Indebtedness are obligations with maturity of not over one year, which have been issued in the past with and without coupons. Since 1921 Certificates of Indebtedness were being replaced by Treasury Bills as the U.S. Treasury's instruments of short-term financing, and since 1966 none have been outstanding. When outstanding Certificates of Indebtedness have been acceptable collateral for secure deposits of Government moneys. However, they have not been acceptable to pay taxes, and income therefrom has been subject to all Federal income taxes. Certificates of Indebtedness have been issued in bearer form, in denominations \$1,000, \$5,000, \$10,000, \$100,000, \$1,000,000, \$10,000,000, and \$500,000,000 (the latter two denominations available only in certain issues in the past). When available, Treasury Certificates of Indebtedness have been suitable for the "secondary reserve" portion of investment accounts of commercial banks, as well as for investment of tax reserves and other liquidity needs of corporations and other business units.  
See U.S. GOVERNMENT SECURITIES.

**CERTIFICATE OF INSPECTION** This certificate, a combined certificate of weight and inspection, is a document which an importer may require the foreign seller to accompany the bill of exchange drawn against the shipment in accordance with the terms of the applicable letter of credit. It is prepared by a trade association or commission authorized to make inspection tests, and gives a description of the goods shipped by package, boxes, barrels, weight, contents, markings, etc., but without prices. This instrument is frequently required in the shipment of heavy and bulky materials and differs from a certificate of analysis in that the latter usually applies to goods of high value and small bulk.  
See LETTERS OF CREDIT.

**CERTIFICATE OF ORIGIN** A certificate sometimes required by an importer to ensure that merchandise has originated in a country in which it was intended to be purchased, and is not being relayed through another country. An importer sometimes desires to protect himself against purchasing goods of a belligerent country which may masquerade as coming from another. A certificate of origin contains practically the same information as a seller's invoice, gross and net weight stated, but prices omitted.

In peace time the chief purpose of this certificate is to protect the most favored nation clause in the customs tariff.  
See LETTERS OF CREDIT.

**CERTIFICATE OF PROTEST**  
See NEGOTIAL PROTEST CERTIFICATE.

**CERTIFICATE OF STOCK**  
See STOCK CERTIFICATE.

**CERTIFICATE OF WEIGHT**  
See CERTIFICATE OF INSPECTION.

**CERTIFICATED STOCKS** Those amounts of a commodity which are stored in warehouses approved by a commodity exchange, and which are certified as being deliverable on future contracts.  
See FUTURES.

**CERTIFICATION DEPARTMENT** The department of a bank which certifies checks. Among small banks checks are certified at the paying teller's window, but larger banks maintain a separate window or windows, usually adjacent to the paying teller's window, whenever the volume of certification business is sufficiently large to warrant a separation of functions. The certification of checks is a part of the paying teller's functions, because certifying a check is equivalent to paying it.  
See CERTIFIED CHECKS.

**CERTIFICATIONS**

**CERTIFIED CHECK** A check which certifies that the signature of the drawer is genuine and that the depositor has sufficient funds on deposit for its payment. The amount certified is then set aside for the express purpose of paying the check and payment cannot be refused because of insufficient funds. When a bank certifies a check, certification is acceptance, i.e., the check becomes an obligation of the bank, instead of being an order on the bank. It is incorrect, however, to say that the bank "guarantees" payment of the check.

The new *Uniform Commercial Code* (sec. 3-411 (2)) now makes specific the point that unless otherwise agreed, a bank has no obligation to certify a check. When a check is presented at the window for certification, the drawer's account in the ledger is first inspected to see that sufficient funds are on deposit to cover the amount which is immediately deducted from the drawer's deposit balance before the check is certified. Certification consists of stamping or writing across the face of the check the word, "Certified" or "Accepted", together with the date, the bank's title, and signature of the officer authorized to make certification.

Since a certified check becomes an obligation of the bank, when a check is certified the drawer's account is reduced (charged) and "Certified Checks" account (in the general ledger) is increased (credited). When certified checks are returned through the clearing house or other channels, the account "Certified Checks" is reduced (charged). Thus the balance of this account represents the total certified checks outstanding.

Although a bank is not obliged by law to certify checks for its customers, among the banks in the larger cities, especially in New York, certification business forms a very important service, especially for customers who deal in securities. Certified checks are also extensively used in those types of business where it is important to receive the equivalent of cash, without at the same time using cash, such as in brokerage and security transactions, payments of loans, and real estate transfers.

## CERTIFIED PUBLIC ACCOUNTANT

A check may be certified at the instance of either the holder or drawer. Where a holder obtains the certification, the drawer and all prior indorsers are discharged (sec. 3-411 (1), *Uniform Commercial Code*). On the other hand, certification obtained by drawer of the check still leaves him liable in the event the certifying bank should fail, before the check is presented for payment. A bank may certify a check before returning it for lack of proper indorsement, but if it does so, the drawer is discharged (sec. 3-411 (3), *Uniform Commercial Code*).

tant to whom a State has given a certificate to the effect that he has met its requirements as to age, education, experience, and technical qualifications, as shown by the fact that he has passed the prescribed examination. The holder of such a certificate is permitted to use the designation "Certified Public Accountant," or the letters "C.P.A.," as an abbreviation, within the State of issue.

State requirements for the C.P.A. certification generally require that a candidate (1) be a citizen and of high moral character, etc.; (2) have adequate educational prerequisites. Some States require a college degree, with major in accounting, others, at the very least, a high school diploma. Key requirements is to pass a comprehensive examination in accounting, both theory and practice; auditing; business law; and in some States, in Economics. The examination is prepared by the American Institute of Certified Public Accountants. In addition, the candidate is required to have one to 5-years' experience in the offices of a C.P.A. or the equivalent. Interested parties are referred to the State Education Department or other appropriate agency of the State in which they intend to become candidates, in order to obtain the specific requirements in the State concerned.

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**CESTUI QUE TRUST** — The beneficiary of a trust, or the person in whose favor a trust operates. The cestui que trust holds the equitable title to an estate, while the trustee holds the legal title.

See TRUSTS.

**CHAIN BANKING** — As defined by the Board of Governors of the Federal Reserve System, "chain banking" indicates a type of multiple office banking, in which the operations or policies of at least three independently incorporated banks are controlled by one or more individuals. This control may be accomplished through stock ownership, common directors, or in any other manner permitted by law. Generally speaking, chain systems are built around a key bank that is considerably larger than the other banks in the chain.

See BRANCH BANKING, GROUP BANKING.

**CHAIN STORES** — Development of chain stores in the U.S.A. was a sequential rather than a direct accompaniment of mass production methods. By furnishing many retail outlets served by central warehouses, all under one general control, chain store organization as a form of mass merchandising was the inevitable answer to mass production. Although the movement began in the '90s, the F. W. Woolworth chain being the oldest of the important systems, a rapid expansion began in the decade 1921-1930; so rapid, in fact, that by 1929 competition among the various chains effected a retardation of sales growth and profit margins. A fresh surge of expansion has occurred in the post-World War II period, caused by such factors as increase in population, rise in the general standard of living, the shift of population from the cities to suburbia and "exurbia", the rise of shopping centers, and the popularization of the home freezer and giant-sized refrigerator. These factors have led particularly to development of the "supermarket" in the food field, with its emphasis on larger space and larger sales per customer.

In principle, chain stores offer an ideal plan of distribution of standardized non-perishable merchandise, the demand for which

constantly recurring and in which the style factor is important. Chains are particularly adapted to the following lines: variety ("five and tens", although even they have long since abandoned such price limits), groceries, apparel, candy, gasoline stations, lunch buffets, restaurants, sporting goods, radio and TV music shops (including records), household appliances, tobacco, "drug" stores (actually variety stores with pharmaceutical backdrop), and automobile accessories. By eliminating middlemen, credit customers, deliveries (not always), elevator service and expensive overhead charges, the aim is to place merchandise in the hands of the consumer at a minimum of make-up per unit, on a low-cost, self-service basis. The supermarket in particular has been able to achieve large sales per customer and per store because of self-service, large wheeled market baskets, readily accessible and attractively displayed goods, centralized high-speed checking stations, and loading of customer's car in the convenient parking space provided.

In the grocery trade, especially, the rise of supermarkets, mostly under chain control, and the mergers of small chains by larger chains have led to a continuous rise in the proportion of grocery business done by organizations with 11 or more retail outlets.

Thus, based on new revised series, 1971 sales of All Grocery Stores rose 4% to a new high record of \$82,793 million, compared with \$79,756 million in 1970; compared to rise of 5% for 1971 for grocery stores of organizations operating 11 or more retail stores, from \$33,183 million to \$45,235 million, thus accounting for new high of 55% of all grocery store sales for 1971, compared to 54% in 1970, and compared to 44% (old series data) in the early '60s.

All 1971 annual sales of organizations operating 11 or more retail stores showed an increase of 7% in 1971 over 1970 for all kinds of businesses combined. Multi-unit organizations particularly accounted in 1971 for sales in their chains of as high as 76% of total sales, in the general merchandise groups and as high as 87% in the department stores group, both even higher "chain store" proportions than in the grocery field.

**Vertical Integration.** — The large grocery chains and many of the smaller chains in this field have integrated "backwards" to the processing stage, operating their own dairies, bakeries, cheese manufacturing plants, coffee roasting plants, meat packing plants, canneries, etc., leading to heavy volume of their own sponsored brands for distribution in their stores in competition with established national brands. Similarly, the mail order houses, operating chains of retail outlets, have a large volume in their own sponsored brands of various types of goods. Besides profitable control over pricing and quality characteristics, another advantage of such integration is the bargaining position of such chains in distribution of competing brands and goods.

**Public Policy.** — The rise of the giant, interstate and integrated chains has posed problems for them in regard to the anti-trust laws, alleged price discrimination practices, and discriminatory State taxation. Chains, however, have adjusted successfully to these reactions against their bigness, although these factors continue to be problems. In particular, the growth of chains has antagonized independent retail merchants. The late Edward A. Filene, head of one of the largest department stores in the country, years ago went so far as to predict that chain stores would drive the individual merchant out of business. Although the independent cannot hope to compete with the chain in mass buying and mass distribution, there is a definite place for the independent merchant in providing differences in goods carried, service, hours of operation, and "place utility" of locational convenience, even in such a line as groceries which is highly amenable to chain store organization and operation.

**Chain Store Management.** — In no line of merchandising is efficient management more important than in chain store operation. Upon the judgment and experience of the central executive staff depends the success of every store. Standardized operations make it possible to centralize chain store control. A trained staff, that a number would formerly have been needed for a single large store, can successfully control the operation of fifty or more chain units. Detailed accounting systems keep the executives informed as to the progress or lack of progress of individual stores. Perpetual inventories keep them in close touch with changes in public demand and store turnover. Elements of good management include: (1) purchases have to be so handled

CHATTEL MORTGAGE

**CHATTEL MORTGAGE** A mortgage with chattel instead of real property given as security. Movable goods (personal property) such as railroad equipment, machinery, furniture, automobiles or trucks, livestock, crops, etc., may be the chattels pledged in a chattel mortgage. In form, the chattel mortgage is like the real estate mortgage, constituting a defeasible conveyance of the pledged property as security for the loan as well as the promissory note evidencing the personal promise to pay the debt. One important similarity of both real property mortgages and chattel mortgages is that ordinarily there can be no substitution of collateral, the mortgage in each case applying to the specific items described therein; thus in chattel mortgage cases should be taken to assure ready identification of the specific items covered, because their movability makes them liable to unauthorized substitution. "After-acquired-property clauses" however, although upheld in real property mortgages as additions and betterments to the mortgaged property, are not upheld in a chattel mortgage, in fact they are sought to apply to additional items of personal property.

Chattel mortgages nevertheless are preferred by most lenders in financing personal property transactions, to the conditional bill of sale. In various States, statutes control strictly the terms and procedure in detail of conditional bill of sale transactions and repossessions, whereas the chattel mortgage would not rigidly control the lender's recourse pursuant to mortgage provisions.

With expansion in *Consumer Credit* and other forms of lending on personal property in modern times, chattel mortgages have long since ceased to be regarded as a sign of weakness in a credit risk.

CHIEF MONEY

**CHECK** As defined by the *Uniform Commercial Code* (sec. 3-104) and by the British Bills of Exchange Act, a check is: "a bill of exchange drawn on a bank, payable on demand." Commentators usually treat checks under the general classification of bills of exchange, but checks differ from bills of exchange also in that they purport to be drawn against a deposit, and are always payable on demand.

As defined by the Board of Governors of the Federal Reserve System (footnote to Regulation J, pertaining to Check Clearing and Collection), "a check is generally defined as a draft or order upon a bank or banking house, purporting to be drawn upon a deposit of funds, for the payment at all events of a certain sum of money to the order of a certain person therein named, or to him or his order, or to bearer, and payable on demand."

Under the *Uniform Commercial Code*, checks (along with drafts, certificates of deposit, and notes) are "commercial paper", covered specifically by Art. 3 of the Code, which represents a complete revision and modernization of the *Uniform Negotiable Instruments Law*. All such "commercial paper" under Art. 3 must have the attributes of negotiability (signed by the maker or drawer; containing an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this Article; payable on demand or at a definite time; and payable to order or to bearer); and if it is a draft drawn on a bank and payable on demand, it is a "check".

Other definitions of a check are: (1) a written order drawn by a depositor upon his bank to pay a sum of money to a designated party; (2) an order on a bank (drawee) by a depositor (drawer, maker or payer) to pay a certain sum of money to a third party (payee); (3) an order upon a bank or banker for the payment of money to a stated party out of funds credited to the account of the drawer. While a check from a legal point of view is an order calling for the payment of money, in actual practice it is rather an order for transferring bank credit used as a substitute for money from one account to another.

The essential elements of a check are: (1) the words of negotiability — "order" or "bearer" — express or implied. The phrase "Pay to the order of" imparts negotiability to the check and makes it an unconditional promise to pay upon demand. The single word "Pay" if used makes such a check not negotiable, i.e., payable only to the person named as the payee; (2) name of payee — person in whose favor the check is drawn. Checks are

sometimes made out payable to Self, Currency, Bearer or Cash, which makes them payable to bearer; (3) amount payable in figures; (4) amount payable in written words; (5) name and location of drawee bank; (6) signature of drawer or maker. In the case of some corporations the signature and counter signatures of designated officers are necessary. The signature is the final touch without which the check is valueless; (7) indorsement. The check should be indorsed as drawn, either in blank or by a special or other indorsement.

The non-essential but convenient elements of a check are: (1) location (name of city in which maker or drawer is located); (2) date of drawing the check; (3) number of the check; (4) transit number, indicating the name and location of the drawee bank according to the universal numerical transit system.

In cashing checks, the paying-teller observes the following points to insure against irregularities, informalities, or discrepancies which, if unnoticed, might involve the drawee bank in a loss: identification of presenting party; date, filling; alterations; signature (authority to sign and forgery); stop payment; financial responsibility; whether a home debit or drawn on another bank; indorsement.

Checks should not be dated ahead (post dated), otherwise they are, in effect, time bills of exchange. Checks should be presented promptly. "In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection: (a) with respect to the liability of the drawer, thirty days after date or issue whichever is later; and (b) with respect to the liability of an indorser, seven days after his indorsement" (sec. 3-503(2), *Uniform Commercial Code*). Banks usually refuse to honor checks more than six months old. These are known as **STALE CHECKS**, since when checks are not presented within a reasonable time after they are drawn there arises a presumption of irregularity. The date is not an essential element of a check, and an undated check is valid.

The amount written in words should agree with the amount written in figures and when there is a discrepancy between the two the amount denoted by the words is the sum payable.

A bank is usually responsible to its customer for paying raised or altered checks. A number of mechanical devices have been invented to prevent the fraudulent alteration of checks.

SEE CHECK PROTECTING DEVICES.

A bank is not required to make a partial payment on a check whenever the drawer has insufficient funds to his credit to make payment in full. Checks made payable to Cash, Currency, or Self, legally require no indorsement when presented by the drawer, but as a matter of practice, paying tellers request indorsement as a type of receipt. In case the drawer himself does not present the check so drawn, the indorsement of the presenter, the drawer's representative, should be requested by the paying teller.

Checks may be classified according to method of collection into five groups: (1) checks drawn on the bank in which they are deposited for credit or cashed over the paying teller's window, known as "own checks," "self checks," or "home debits"; (2) checks drawn on banks in the same city and which will be paid through the clearing house, known as "clearing house checks"; (3) checks drawn on banks, corporations, and individuals in the same city which are not members of the clearing house and which must be presented for payment either through the city collection department of the clearing house, or directly by messengers; (4) checks drawn on banks located at various out-of-town points which must be collected through the Federal Reserve Clearing System, or through correspondents or other collecting agents, known as out-of-town checks, transit checks, or foreign checks, and (5) checks drawn on, or issued by a bank located in a foreign country.

SEE ALTERATION, CASHIER'S CHECK, CERTIFIED CHECK, CHECK BOOK, CHECKING ACCOUNT, COMMERCIAL CODE, CREDIT INSTRUMENTS, CROSSED CHECKS, DATE, FILLING, FORGED INSTRUMENTS, NEGOTIABLE INSTRUMENTS LAW, SIGNATURE, TRAVELERS CHEQUES, VOUCHER CHECK.

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**DOW THEORY**

St. Louis	4.25s	Los Angeles	4.25s
Houston	4.65s	California	4.00s
Kansas City	4.00s	New Orleans	4.50s
Missouri	4.00s	Detroit	4.50s
Chicago	4.00s	Cleveland	4.00s

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**DOW JONES STOCK AVERAGES**  
Yearly Range

	30 Industrials		20 Transport Cos.		15 Utilities	
	High	Low	High	Low	High	Low
1929	381.17	198.71	189.11	128.07	144.61	77.72
1930	294.07	157.71	157.94	91.65	108.62	55.14
1931	194.36	71.79	111.58	31.42	73.40	30.55
1932	88.78	21.22	41.30	13.23	36.11	16.53
1933	108.67	50.16	56.53	23.43	37.55	19.33
1934	110.71	85.51	52.97	33.19	70.03	16.83
1935	148.58	96.71	41.84	27.31	57.78	14.46
1936	185.00	143.11	59.89	40.66	36.08	28.63
1937	254.40	113.64	64.46	28.91	37.54	19.65
1938	258.41	98.95	33.98	19.61	25.19	15.14
1939	155.92	121.44	35.90	24.54	27.10	20.71
1940	152.80	111.84	32.67	7.14	26.45	18.03
1941	133.59	106.34	30.88	24.25	20.65	13.51
1942	119.71	92.92	29.28	23.31	14.94	10.58
1943	145.82	119.26	38.31	27.59	22.30	14.69
1944	152.53	134.22	48.51	33.45	26.37	21.74
1945	195.82	151.35	64.59	47.03	39.15	26.15
1946	212.50	163.12	77.31	44.69	43.74	33.20
1947	186.85	163.21	53.42	41.16	37.55	32.21
1948	193.16	165.39	64.95	48.13	36.04	31.71
1949	200.52	161.69	54.29	41.03	41.31	32.66
1950	235.47	196.71	77.89	51.24	44.26	34.40
1951	276.37	237.99	90.08	72.39	47.22	41.47
1952	292.00	236.35	112.53	82.03	52.61	47.53
1953	293.79	255.49	112.21	90.56	53.81	47.87
1954	404.39	279.87	146.23	94.84	62.51	52.22
1955	488.11	388.20	167.83	137.84	66.68	61.39
1956	521.85	462.35	181.23	150.44	71.17	63.03
1957	577.77	419.79	157.67	95.67	74.61	62.10
1958	433.65	436.89	157.91	99.89	91.00	68.94
1959	479.36	574.46	173.56	146.58	94.70	85.05
1960	685.47	566.05	160.43	121.97	100.07	85.00
1961	734.91	610.25	152.92	127.06	135.90	99.71
1962	726.01	535.76	149.83	124.86	130.85	103.11
1963	767.21	646.79	179.46	142.03	144.37	129.11
1964	891.71	766.08	224.91	178.81	155.71	137.31
1965	969.26	810.59	249.51	187.29	163.32	149.81
1966	995.15	744.32	277.72	184.34	152.39	118.91
1967	943.08	786.41	277.49	205.16	140.43	120.91
1968	985.21	825.13	279.48	214.58	141.30	119.71
1969	968.85	769.93	279.88	169.03	139.95	106.81
1970	842.00	631.11	183.31	116.69	121.84	98.81
1971	950.82	797.71	248.33	169.70	128.39	108.01
1972	1036.27	887.15	275.71	212.24	124.14	105.01

\* Called the Railroad Average through Dec. 31, 1949.  
 Source — Dow Jones & Co., Inc.

**DOW THEORY** A theory of stock price movement, based upon interpretation of action of the Dow Jones Averages (Industrial and Transportation Companies) for indication of direction of the "primary trend" (major upward or downward movement). "Secondary movements" (fallies in a primary downward or reactions in a primary upward) are temporary reversals of the primary trend. The daily fluctuations are considered to be of no value individually, but collectively make up the first two movements. Closings for the Industrials and

Transportation Companies (formerly the Railroad Average) only are used as basic data. The primary trend is likened to the tide; the secondary movements, to the waves; and the daily fluctuations, to the ripples. The forecasting aims at applying the Dow Theory to determine the direction of the primary trend (tide). The primary movement, once established, continues in the same direction, although interrupted by secondary movements, until there is a "confirmation" of change in direction. The Industrials must be confirmed by the Transportation Companies, vice versa, in the indication of change in primary trend.

"Confirmation" in Dow Theory literature may occur (1) on breakouts by both Averages in either direction, up or down, from a narrow band of fluctuation ("line"); (2) by new highs or lows made on secondary movements by both Averages. The latter interpretation is preferred by Dow Theorists of modern times. In a "bull market," a secondary rise is followed by a secondary reaction, the rise must exceed the previous secondary peak and the low on the secondary reaction must not fall below the low of the previous secondary reaction. If this happens, the direction on the primary trend continues upward. If, however, both Averages fail in their secondary movements to sustain the primary trend, (e.g. secondary movement high fails to penetrate previous secondary high; and secondary movement low penetrates below the previous secondary low), a change in direction of the primary trend is confirmed from uptrend ("bull market") to downtrend ("bear market"). The new primary trend will continue in that direction, again interrupted by secondary movements, until a new confirmation is given of change in primary trend. Each average must confirm the other, even if it involves a time lag so that the signal of change in direction of primary trend is late.

The "Dow Theory" evolved from the editorials of Charles H. Dow, founder of the Dow Jones & Co., Inc., in the Wall Street Journal at the turn of the century. The "Dow Theory" is first found labeled as such in S. A. Nelson's *The ABC of Speculation* (1902). William Peter Hamilton, who succeeded Dow as editor of the Wall Street Journal, particularly popularized the Dow Theory by editorials thereon, particularly his famous editorial, "A Turn in the Tide", of October 25, 1929. Although the Wall Street Journal no longer promotes the Dow Theory by editorials, etc., the Theory still has many practitioners and proponents, notwithstanding mixed results with its signals over the years.

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**DRAFT** A written order drawn by one party (the drawer) ordering a second party (the drawee) to pay a sum of money to a third party (the payee). Oftentimes the drawer and payee are the same party, the draft being made payable to "Ourselves". In reality, a draft is a bill of exchange, except that in this country the term draft is customarily used in domestic transactions, whereas, both terms, draft and bill of exchange, are used in foreign transactions. A draft may be made non-negotiable, but a bill of exchange cannot. Drafts have all the chief characteristics of bills of exchange.

Drafts are of three kinds: (1) sight, demand or presentation drafts, payable immediately, at sight, or on demand or presentation; (2) arrival drafts — a modification of a sight draft — payable upon the arrival of goods at the destination of the drawee and for which the draft has been drawn in payment; (3) time drafts — payable at a fixed date, or a certain number of days after date (the latter sometimes being called "days after date" drafts).

A time draft payable 30 days after sight must be presented for acceptance, and at maturity for payment. A 30-day sight draft is payable 30 days after ACCEPTANCE by the drawee, when it comes an acceptance or obligation. Upon acceptance the drawee

becomes the acceptor and principal debtor, and is bound to pay the draft at maturity. The bank at which a draft is payable should be indicated on the face of the instrument by the acceptor.

Drafts usually arise out of commercial transactions in which the buyer and seller are located at different points. A draft differs from a check in that it may be a time instrument drawn on an individual, firm, corporation or bank, and the initiative for payment of the goods is taken by the seller and not the buyer. Usually previous arrangements have been made between the buyer and the seller which permit the seller to draw drafts against the buyer in settlement of all transactions between them. Generally a shipper (seller) sends the draft drawn against the drawee (buyer) to its bank to make a presentation and collection with shipping documents attached. The shipper's bank then forwards the draft with documents to its correspondents in the city to which the goods are destined. Instructions are given to the collecting bank to surrender the bill of lading either upon acceptance or payment of the draft, the documents being referred to as "documents against acceptance," or "documents against payment," respectively.

Some drafts do not arise out of commercial transactions, but to secure payment for securities sent from one place to another, the draft being sent to a bank for collection with instructions to release the securities only upon payment. Other drafts, without documents attached, merely operate as "duns" or demands for payment of bills past due.

See ARRIVAL DRAFT, BILL OF EXCHANGE, FOREIGN BILLS OF EXCHANGE, TRADE ACCEPTANCE.

tion or bank, against which a check or draft is drawn and from which payment is expected.

**DRAWER** A party, whether an individual, firm, corporation or bank, who draws, i. e., makes, a check, draft, or bill of exchange. The drawer is also known as the payer. In the case of a check the drawer is a debtor, and therefore the payer, while in the case of a draft and bill of exchange the drawer is the creditor, and is very often the payee.

**DRAWN BONDS** Bonds which have been called for redemption by lot.  
See CALLED BONDS.

**DRIVE** An expression to indicate a sudden attack upon security or commodity values by sellers in an effort to force prices down. Section 9 of the Securities and Exchange Act of 1934 prohibits manipulative practices in such activity.  
See MANIPULATION.

**DROP** An expression to indicate a fall in security or commodity prices.  
See DECLINE.

**DUE DATE** The date upon which a note, draft, acceptance, bond, or other evidence of debt becomes payable; the maturity date.  
See TIME TO RUN.

**DUE FROM BANKS** An asset account appearing in the general ledger and financial statement of a bank to indicate the aggregate amount of balances outstanding with and due from other banks.

**DUE FROM BANKS COLLECTIONS** A contingent asset account appearing in the general ledger and financial statements of a bank to indicate the aggregate amount of out-of-town checks in process of collection, but not yet available as cash, through the medium of collection agents or correspondent banks. When the items are collected, the amount is added to the account entitled "Due from Banks," and subtracted from this account.

**DUE FROM FEDERAL RESERVE BANK (OR FEDERAL RESERVE BANK ACCOUNT)** An asset account appearing in the general ledger and financial statement of a member or clearing member bank to indicate the balance due from a Federal Reserve Bank. This amount represents approximately the cash reserve required by law to be kept with the Federal Reserve Bank.

**DUE FROM FEDERAL RESERVE BANK, COLLECTIONS** A contingent asset account appearing in the general ledger and financial statement of a bank to indicate the aggregate of checks in the process of collection, but not yet available as cash reserve through the agency of the Federal Reserve Bank. When these items are collected, the account entitled, "Due from Federal Reserve Bank," is increased, and the amount subtracted from this account.

**DUE FROM FOREIGN EXCHANGE DEPARTMENT** An asset account appearing in the general ledger or financial statement of a bank to indicate the aggregate funds entrusted with the foreign department for use or investment in foreign exchange operations. The operations of a foreign department are usually considered as distinct from those of the rest of the bank, and its bookkeeping operations are kept separate. This item represents the accountability of the foreign department to the bank.

**DUE TO BANKS** A liability account appearing in the general ledger or financial statement of a bank to indicate the aggregate amount deposited by banks as distinguished from individuals, firms and corporations (other than banks, corporations).

**DULL** An expression used on a stock or commodity exchange to indicate inactive trading, and that little interest is displayed in the movement of prices.

**DUMMY** A term used in connection with directors, officers, stockholders, etc., to indicate a person who acts for another, but who has no real responsibility or liability. He is merely placed in office to complete the number required by law or for publicity purposes.

**DUMP** To offer suddenly for sale large blocks of securities on the market for the purpose of disposing of them regardless of the prices offered; to unload large blocks of a security or securities.

In a commercial sense this term is used in connection with international trade. When one nation floods the market of another with large quantities of a certain commodity or commodities at prices lower than they can be purchased at home, or in other foreign countries, the foreign nation is said to be dumping its goods in the other country's market.

**DUN & BRADSTREET** The oldest and largest mercantile agency in the United States and of the world, supplying credit information and credit ratings on and for all types of business concerns. The present company, Dun & Bradstreet, Inc., represents an amalgamation, as of March 1, 1933, of two national credit information agencies, G. Dun & Co. and The Bradstreet Company.

Lewis Tappan, pioneer credit executive and originator of the idea of centralized credit reporting, was first proprietor of The Mercantile Agency, which was founded in 1841. Succession in proprietorship of The Mercantile Agency was as follows: Lewis Tappan & Co., 1841-1857; Tappan & Douglass, 1849-1857; B. Douglass & Co., 1854-1859; and R. G. Dun & Co., 1857-1933. The J. M. Bradstreet & Son's Improved Mercantile Agency was founded in 1849, and was incorporated in 1876 as The Bradstreet Company, continuing as such until the merger with G. Dun & Co. in 1933. John M. Bradstreet was a dry goods merchant and lawyer who had acquired a substantial file of credit information in the process of liquidating a large estate.

**FEDERAL R.**

Regulation T to cover all brokers and dealers and thus bring under the new Margin requirements all brokers and dealers handling Over-the-Counter accounts exclusively.

Amendments to Regulations G, T and U, effective May 6, 1970 lowered Margin requirements from 80% to 65% for credit extended by brokers, dealers, banks, and other lenders to finance purchase of stocks; and from 60% to 50% for credit extended by such persons to finance purchase of convertible bonds. No change was made in the 70% retention requirement applicable to unmarginated accounts.

**See MARGIN REQUIREMENTS.**  
Regulation — Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks (formerly, prior to amendment effective July 8, 1969, entitled Credit by Banks for the Purpose of Purchasing or Carrying Registered Stocks). See *supra* under Regulation G and Regulation T; and see MARGIN REQUIREMENTS.

Regulation V — Loan Guarantee for Defense Production. Provides that rates of interest, guarantee fees, commitment fees, and other charges which may be made with respect to guaranteed loans and guarantees executed through the agency of any Federal Reserve Bank under this Regulation will from time to time be prescribed, either specifically or by maximum limits or otherwise, by the Board of Governors after consultation with the guaranteeing agencies designated in the Defense Production Act of 1950, as amended, and pertinent Executive Orders.

Regulation Y — Bank Holding Companies. Effective March 15, 1968, Regulation Y was revised, primarily to make the Regulation conform to the provisions of the Bank Holding Company Act amendments of 1966.

Regulation Z — This new Regulation, Truth in Lending, was adopted effective July 1, 1969 to implement Title I (Truth in Lending Act) and Title V (General Provisions) of the Consumer Credit Protection Act.

The discontinued regulations, Regulation Y and Regulation X, were terminated in 1952. Regulation W, Consumer Credit, governing down payments and length of maturities on instalment credit in amounts of \$5,000 or less in connection with consumer durable goods, pursuant to the last statutory authority therefor, the Defense Production Act of 1950, amendments to which approved June 30, 1952 repealed the Board's authority for regulation of consumer credit. Effective May 7, 1952, the Board had suspended the regulation.

Regulation X, Real Estate Credit, regulated credit extended for real estate construction, residential and non-residential, specifying maximum loan values, minimum down payments, maturities, and amortization required. Pursuant to the provisions of sec. 607 of the Defense Production Act as amended, and sec. 503 of Executive Order No. 10161, as amended, the Board with the concurrence of the Housing Home Finance Administrator, announced the beginning on September 16, 1952 of a period of residential credit control relaxation" and the suspension of the Board's Regulation X, effective September 16, 1952.

In addition to the published Regulations of the Board of Governors of the Federal Reserve System, the Board of Governors also make available their Published Interpretations of the Board of Governors, explaining points of general interest in the Regulations, which also appear in the *Federal Reserve Bulletin*. Each Federal Reserve Bank also publishes arabic-numbered circulars for "operating letters" for the guidance of its member banks on forms and procedures.

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**FEDERAL RESERVE BOARD SETTLEMENT**

Settlement of balances arising among Federal Reserve Banks, arising as the result of inter-district collections.  
**See INTER-DISTRICT SETTLEMENT FUND.**

**FEDERAL RESERVE BRANCH BANKS** Banks operating as branches of a Federal Reserve bank. The Federal Reserve Act authorizes Federal Reserve banks to establish branches without limit as to number under regulations approved by the Federal Reserve Board of Governors, but each branch must be within the boundaries of the Federal Reserve district of the Reserve bank which establishes it. At the date of this publication twenty-four branches had been established. As of mid-1970, however, the Federal Reserve Bank of Atlanta received the approval of the Board of Governors to plan the establishment of an additional branch for that District, at Miami, Florida.

For the boundaries of the Federal Reserve districts and the areas served by the branch banks, see map under Federal Reserve Districts.

**Location of Branch Federal Reserve Banks**

District	Branches
1st District, Boston	None
2nd District, New York	Buffalo
3rd District, Philadelphia	None
4th District, Cleveland	Cincinnati, Pittsburgh
5th District, Richmond	Baltimore, Charlotte
6th District, Atlanta	Birmingham, Nashville, Jacksonville, New Orleans
7th District, Chicago	Detroit
8th District, St. Louis	Louisville, Memphis, Little Rock
9th District, Minneapolis	Helena
10th District, Kansas City	Denver, Oklahoma City, Omaha
11th District, Dallas	Houston, El Paso, San Antonio
12th District, San Francisco	Seattle, Portland, Salt Lake City, Los Angeles

**FEDERAL RESERVE BULLETIN** The official organ of the Board of Governors of the Federal Reserve System. It is issued monthly under the direction of the staff Editorial Committee, which is responsible for opinions expressed, except in official statements and signed articles. Copy of the Federal Reserve Bulletin is sent to each member bank without charge. Member banks desiring additional copies may secure them at a special annual rate (as of 1970) of \$2. Regular subscription price is \$6 per annum or 60¢ per copy, in the United States and its possessions; Bolivia, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti, Republic of Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, El Salvador, Uruguay, and Venezuela. Elsewhere, the subscription rate is \$7 per annum or 70¢ per copy. Multiple copies to one address is 50¢ per copy per month, or \$5 for 12 months.

**FEDERAL RESERVE CHECK COLLECTION SYSTEM** The Federal Reserve Act authorizes the Board of Governors of the Federal Reserve System to require each Federal Reserve Bank to "exercise the functions of a clearing house for its member banks." Although the Federal Reserve System began operations in 1914, the check collection system was not established until July 1916.

The purpose of the Federal Reserve check collection system was to correct the defects of the methods previously employed, and particularly the following abuses: (1) circuitous routing of checks which grew out of the efforts of banks to avoid exchange charges, and which resulted in great delay in the presentation of items; (2) inequitable distribution of exchange charges between Eastern metropolitan banks and "country" banks; and (3) excessive exchange charges.

At the present time, the Federal Reserve check collection system is efficiently organized, and through its instrumentality, out-of-town items are passed directly, economically, and at par among member banks and clearing non-member banks, i.e., non-member banks on the PAR LIST. Consequently, the only banks which do not participate in this collection system are such non-member banks as are not on the par list.

## FEDERAL RESERVE CIRCULATION

When a member bank transmits out-of-town checks to a Federal Reserve Bank to be collected from another member or clearing non-member bank, the sending bank is immediately credited in the collection or "float" account of the Federal Reserve Bank. That is to say, the amount of the checks so sent does not become available as reserve credit until the checks are credited as collected pursuant to the automatic timing provided by the "Schedule Showing When the Proceeds of Items Become Available" (Deferred Availability Schedule), of each Federal Reserve Bank. In this Schedule, the United States is divided geographically as to items payable at specified Federal Reserve Bank or Branch cities, and those payable at banks on the Par List in localities outside of such Bank or Branch cities. The deferred credit, after one day or after two days (depending on the cities where the items are payable) after receipt, "ripens" automatically to credit to the reserve account of the member bank at its Federal Reserve Bank. The same procedure applies as to items received on out-of-town points forwarded by non-member clearing banks, their account at the Federal Reserve Bank being a "clearing account" rather than reserve account.

Federal Reserve check routing symbol system: Expeditious collection of out-of-town checks, prepared in packages with accompanying listing of amounts of individual checks ("cash letters"), is aided by the check routing symbol system, a numerical code indicating basic information needed in collections, which was developed by the Bank Management Commission of the American Bankers Association and the Committee on Collections of the Federal Reserve System. The routing symbol for Federal Reserve Bank purposes is the denominator of a fraction, the numerator being the ABA TRANSIT NUMBER assigned to the drawee bank. The combined symbol is printed on the upper right hand corner of checks in uniform type. The routing symbol (denominator of the fraction) is composed of not less than 3 nor more than 4 consecutive digits printed close together. The code value for handling of collections may be summarized as follows:

1. In the case of a 3-digit routing symbol, the first digit indicates at a glance the particular Federal Reserve district, and the digits run from 1 to 9, as follows:

Boston	1	Atlanta	6
New York	2	Chicago	7
Philadelphia	3	St. Louis	8
Cleveland	4	Minneapolis	9
Richmond	5		

The second digit in a 3-digit routing symbol indicates the head office of the Federal Reserve Bank, or of the branch serving the territory in which the drawee bank is located. Head office is indicated by the digit "1". Branches, if any, arranged alphabetically are indicated by the figures "2" to "5". Figures "6" to "9" are reserved to indicate special collection arrangements.

The third digit in a 3-digit routing symbol indicates whether the item is receivable for immediate credit or for deferred credit without regard to the standard days of deferred availability, and the State in which the drawee bank is located. The figure "0" indicates items receivable for immediate credit, if received in time to be cleared the current day. All other figures, "1" to "9", indicate items receivable for deferred credit and also designate the State (arranged alphabetically) in which the drawee bank is located, parts of States, or certain cities.

2. In the case of a 4-digit routing symbol, the digits have the same meaning as those in a 3-digit routing symbol, except that the first two digits indicate the 10th, 11th, or 12th Federal Reserve Districts, as follows:

Kansas City	10	San Francisco	12
Dallas	11		

For Federal Reserve adaptation to the new era of automation in check handling, including use of magnetic ink-encoded checks, See AUTOMATION.

Federal Reserve charges for collections: Originally, in July 1916, when the Federal Reserve Banks initiated their plan for clearing and collection of checks, a charge of not exceeding 2¢ per item was made, pursuant to authorization (still existing) in sec. 16 of the Federal Reserve Act. Charge was gradually reduced, so that by the close of 1917, the maximum charge was 1½¢ per item. As of July 1, 1918, the charge was entirely eliminated by action of the Federal Reserve Board, and it has never been reimposed.

Par and Non-Par Banks: Member banks and non-member banks clearing through the Federal Reserve Banks must agree to remit collection items at par. Each Federal Reserve Bank stands ready to collect free of charge checks as well as certain other types of non-cash transit items, but banks still prefer to utilize the services of correspondent banks for collection of non-cash transit items requiring special handling. Such items may be forwarded to correspondents, irrespective of their membership in the Federal Reserve System, but it is stipulated by the rules of the New York and other Clearing Houses that if the correspondents are in the System, items forwarded to them cannot be collected under any other terms than those prescribed by the rules governing Federal Reserve collections as regards exchange and time outstanding. It should be noted that nothing in the Federal Reserve Act or Clearing House rules prohibits banks from charging customers placing items for collection, and such collection charges are customary in properly costed accounts.

As of June 30, 1972, there were on the par list of the Federal Reserve System a total of 13,523 banks (5,715 member banks and 7,808 non-member banks), compared with 247 banks not on the par list. The par banks had total branches and offices of 23,840 locations, compared with 142 branches and offices for the non-par banks. By comparison, as of December 31, 1959 there had been 11,695 banks on the par list, and 1,690 non-par banks; and twenty years previous to that date, the total number of par banks was 11,757 banks, compared with total of 2,719 non-par banks.

See ABA TRANSIT NUMBER, AUTOMATION, CLEARING HOUSE, FEDERAL RESERVE INTER-DISTRICT COLLECTION SYSTEM, INTER-DISTRICT SETTLEMENT FUND, SCHEDULE SHOWING WHEN PROCEEDS OF ITEMS WILL BECOME AVAILABLE.

### See FEDERAL RESERVE NOTES

**FEDERAL RESERVE CITIES** The cities in which the twelve Federal Reserve banks are located. Each Federal Reserve bank has a number corresponding to the district in which it operates. The twelve Federal Reserve cities, together with the districts in which they are located, are:

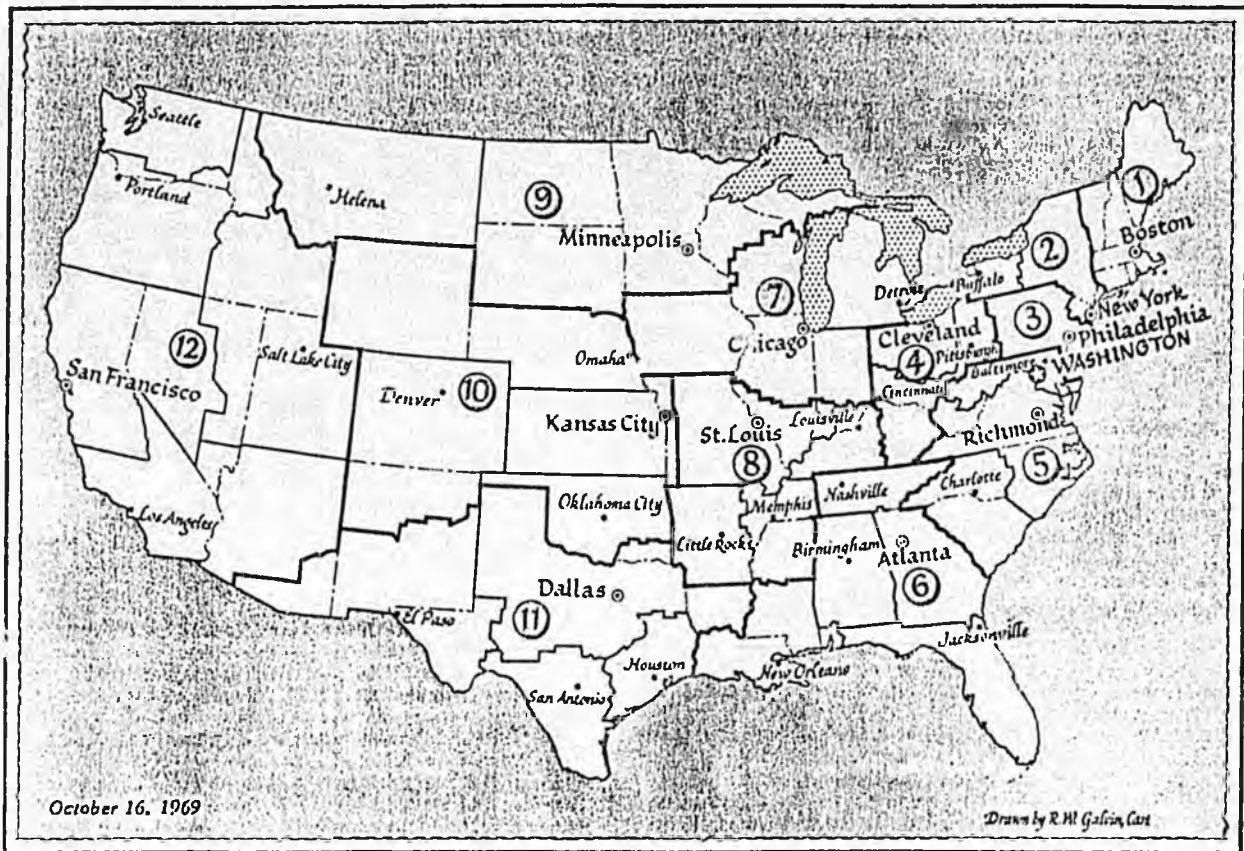
1. Boston	7. Chicago
2. New York	8. St. Louis
3. Philadelphia	9. Minneapolis
4. Cleveland	10. Kansas City
5. Richmond	11. Dallas
6. Atlanta	12. San Francisco

### See FEDERAL RESERVE BRANCH BANKS, FEDERAL RESERVE DISTRICTS

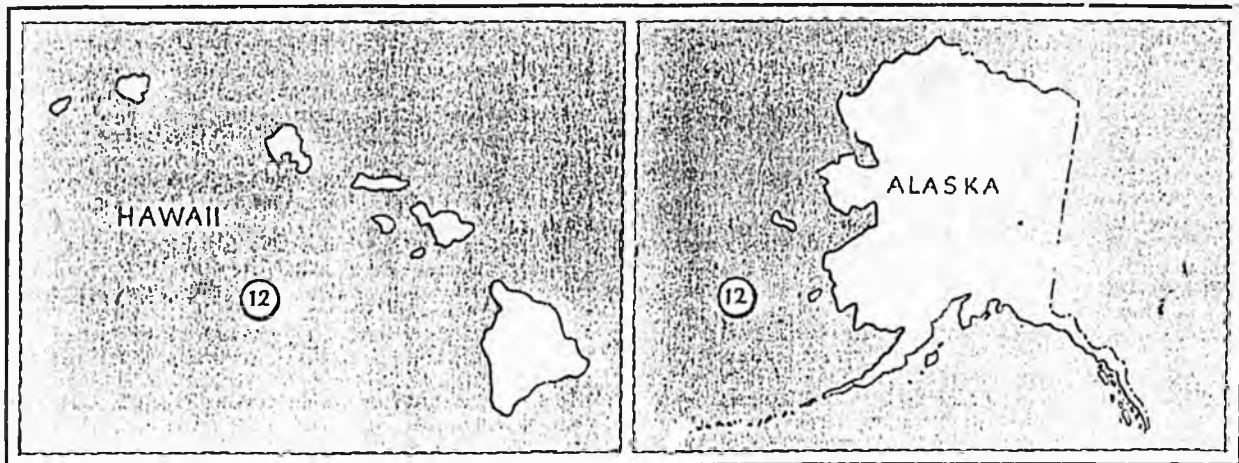
**FEDERAL RESERVE CREDIT** Total volume of Federal Reserve credit outstanding, the "supply" which the Federal Reserve Banks have contributed to member bank reserves, and consists principally of earning assets of the Federal Reserve Banks: (1) bills discounted; (2) bills bought, either outright or on repurchase agreement; (3) advances to member banks; (4) discounts for member banks; (5) holdings of U.S. Government securities either outright or under repurchase agreements; and (6) all other Federal Reserve Bank credit. Included in the miscellaneous forms of Federal Reserve Banks' credit is "float", or difference between items at Federal Reserve Banks in process of collection and total of deferred availability credits, which difference representing credits to accounts of clearing member and non-member banks before charge to drawee banks on actual collection.

Also included in the miscellaneous forms of Federal Reserve credit is the catch-all classification, "Other Federal Reserve assets", which in recent years includes an important international item, holdings of foreign currencies reflecting "swap" foreign exchange arrangements with foreign central banks or their operations in foreign exchange, International Monetary Fund gold deposited; as well as Federal Reserve Banks' investments in bank premises and other assets. Such "Other Federal Reserve assets" are now reported gross, instead of net as formerly, after deduction of capital accounts (capital paid in, surplus, and other capital accounts), other liabilities, and accrued dividends. The total of these latter items is now shown gross as itself as "Other Federal Reserve

BOUNDARIES OF FEDERAL RESERVE DISTRICTS AND THEIR BRANCH TERRITORIES



☆ THE FEDERAL RESERVE SYSTEM ☆



Legend

- Boundaries of Federal Reserve Districts
- Boundaries of Federal Reserve Branch Territories
- ⊕ Board of Governors of the Federal Reserve System
- ⊙ Federal Reserve Bank Cities
- Federal Reserve Branch Cities

# EXHIBIT 5.G

NEGOTIABLE

Gross National Product: Receipts and Expenditures  
by Major Economic Groups  
(in billions of dollars)  
Calendar Years 1970 - 1971<sup>p</sup>

	1970			1971 <sup>p</sup>		
	Receipts	Expenditures	Excess of Recs. (+) over Exps. (-)	Receipts	Expenditures	Excess of Recs. (+) over Exps. (-)
<b>Persons:</b>						
Disposable personal income .....	\$669.9			\$722.6		
Personal consumption expenditures .....		\$615.8	+54.1		\$662.2	+60.4
Personal net saving .....						
<b>Business:</b>						
Gross retained earnings .....	99.0			112.0		
Gross private domestic investment .....		135.3	-36.0		150.8	-38.1
Excess of investment .....						
<b>International:</b>						
Net transfers to foreigners by persons and government .....	3.1			3.4		
Net exports of goods and services .....		3.6	-0.4		0.7	+2.7
Excess of exports .....						
<b>Government (Federal, State and local):</b>						
Tax and nontax receipts or accruals .....	300.5			320.8		
Less: Transfers, interest and subsidies (net) .....	94.2			108.0		
Equals: net receipts .....	206.3			212.8		
Total Government expenditures .....		313.6			341.1	
Less: Transfers, interest and subsidies (net) .....		94.2			108.0	
Equals: Purchases of goods and services .....		219.4			233.1	
Surplus or deficit on income and product account .....			-13.1			-20.3
Statistical discrepancy .....	-4.5		-2.5	-4.7		-2.7
Gross national product .....	974.1	974.1	...	1,046.8	1,046.8	...

Note: Totals may vary because of rounding.  
p - Preliminary.

Source - Council of Economic Advisers, *Annual Report, 1972*.

reasoned, would provide the incentive for additional drilling and discoveries for proving out the potential reserves. Because Natural Gas reserves are found often in conjunction with oil wells, the two natural resources are intertwined insofar as incentives and additional exploration for increased domestic supplies are concerned.

See OIL, PUBLIC UTILITY INDUSTRY.

### BIBLIOGRAPHY

American Gas Association, *Gas Utility Projections, 1971-1990*.

**NEGOTIABLE** When an instrument is negotiable, legal title thereto may be transferred from one person to another in such a manner as to constitute the transferee the holder. Negotiation may be accomplished by mere delivery, if the instrument is a bearer instrument; or by indorsement and delivery, if the instrument is an order instrument. The holder of a negotiable

instrument may sue thereon in his own name, and payment to him in due course discharges the instrument.

The most important attribute of negotiable instruments is the superior position of the holder who is a **HOLDER IN DUE COURSE**, who holds the instrument free from any defect of title of prior parties, and free from all defenses except the "real defenses" available to prior parties among themselves, and who may enforce payment of the instrument for the full amount against all liable parties. For the requirements of negotiability, see: sec. 3-104, Uniform Commercial Code, which has been enacted in the various States.

See **NEGOTIABLE INSTRUMENTS, NEGOTIABLE INSTRUMENTS LAW.**

Include all forms of **NEGOTIABLE INSTRUMENTS**, and other paper which is negotiable by merely delivery, e.g., bearer checks, drafts or notes, bearer bonds or bond coupons; or by delivery

# EXHIBIT 5. H

## NEGOTIABLE INSTRUMENTS LAW

and indorsement, e.g., order checks, drafts or notes, order bills of lading. Technically, a negotiable instrument is one which calls for the payment of money. Bills of lading and warehouse receipts call for delivery of merchandise, and while they cannot be considered negotiable instruments in the technical sense, still they may be negotiated or made order documents. Similarly, in the case of securities, the doctrine of "bona fide purchaser" is analogous to that of holder in due course applicable to negotiable instruments, in that such a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him in blank, acquires the security free of any adverse claim in addition to acquiring the rights of a purchaser (secs. 8-301(a) and 8-302, Uniform Commercial Code).

Negotiable documents, therefore, is a term employed to designate all paper which may be negotiated whether negotiable instruments or not.

**NEGOTIABLE INSTRUMENTS** Written orders or promises to pay money which may be transferred from one person to another by delivery, or by indorsement and delivery, the full legal title thereby becoming vested in the transferee; and the negotiation of which to a **HOLDER IN DUE COURSE**, gives such holder the same rights as the original payee (promisee) free from defenses (except the "real" defenses) which might defeat them. Thus, a holder in due course who has purchased a negotiable instrument and secured title by negotiation is the absolute owner. He does not merely purchase as good a title as the previous owner, as does a mere assignee.

Negotiation is achieved (1) by delivery, i.e., by merely handing it from one person to another, when the negotiable instrument is payable to bearer; or (2) by **INDORSEMENT**, and delivery, when the negotiable instrument is payable to order.

Any writing to be a "negotiable instrument" within the meaning of sec. 3-104 of the Uniform Commercial Code must: (a) be signed by the maker or drawer; and (b) contain an unconditional promise or order to pay a sum certain in money, and no other promise, order, obligation or power given by the maker or drawer except as authorized by the Code (sec. 3-112 authorizes an instrument to include limited obligation or power besides the promise or order to pay a sum certain in money); and (c) be payable on demand or at a definite time; and (d) be payable to order or to bearer.

The principle negotiable instruments in the United States are checks, bills of exchange, promissory notes, and acceptances.

See **NEGOTIABLE SECURITY**.

ing to negotiable instruments, which has undergone two major attempts to achieve greater uniformity among the various States: (1) the original Uniform Negotiable Instruments Law (UNIL), which beginning in 1897, was legislated by all the various States with, however, variations and departures from the "uniform" model for specific States; and (2) the Uniform Commercial Code (UCC), which constitutes a more comprehensive attempt to achieve greater uniformity in the fields of sales, Commercial Paper, Bank Deposits and Collections, Letters of Credit, Bulk Transfers, Warehouse Receipts, Bills of Lading, other Documents of Title, Investment Securities, and Secured Transactions, including sales of accounts, chattel paper, and contract rights. The UCC, first offered to the States for adoption in 1952 and first enacted by Pennsylvania in 1953, was by 1971 adopted in every State except Louisiana, and also adopted in the District of Columbia and the Virgin Islands.

The term "Commercial Paper" of the UCC comprehends "negotiable instruments", the subject of the UNIL.

Prior to the codification and enactment of the UNIL, cases growing out of litigation concerning bills, notes, and checks were governed by case law, the so-called "law merchant"—a body of rules, customs, and principles which had been practiced for centuries in England and recognized legally by the law courts beginning in the 13th century, particularly by the famous English jurist, Lord Mansfield, sitting on the Court of King's Bench. The case law, based on the law merchant, and involving litigation in modern times as well, is resorted to still in those rare cases not

covered "on all fours" or on moot points arising under the Codes. The first statement of the principles of the law merchant was the British Bills of Exchange Act, enacted in 1882. The American UNIL was to a large extent influenced by the English law.

The UCC is composed of ten Articles, as follows:

Article 1, General Provisions. — Part 1, Short Title, Construction, Application and Subject Matter of the Act; Part 2, General Definitions and Principles of Interpretation.

Article 2, Sales. — Part 1, Short Title, General Construction, and Subject Matter; Part 2, Form, Formation and Readjustment of Contract; Part 3, General Obligation and Construction of Contract; Part 4, Title, Creditors and Good Faith Purchasers; Part 5, Performance; Part 6, Breach, Repudiation and Excuse; Part 7, Remedies.

Article 3, Commercial Paper. Reproduced below.

Article 4, Bank Deposits and Collections. Also reproduced below, in view of the provision that Article 3 is subject to the provisions of Article 4.

Article 5, Letters of Credit.

Article 6, Bulk Transfers.

Article 7, Warehouse Receipts, Bills of Lading, and Other Documents of Title. — Part 1, General; Part 2, Warehouse Receipts; Special Provisions; Part 3, Bills of Lading; Special Provisions; Part 4, Warehouse Receipts and Bills of Lading; General Obligations; Part 5, Warehouse Receipts and Bills of Lading; Negotiation and Transfer; Part 6, Warehouse Receipts and Bills of Lading; Miscellaneous Provisions.

Article 8, Investment Securities. — Part 1, Short Title and General Matters; Part 2, Issue — Issuer; Part 3, Purchase; Part 4, Registration.

Article 9, Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper. Also reproduced below, in view of the provision that Article 3 is subject to the provisions also of Article 9.

Article 10, Effective Date and Repealer.

Because of persisting although reduced variation in the specific provisions of enacted State versions of the UCC, reference should be made to the particular State law in each jurisdiction, along with the interpretive case law of the jurisdiction, which sometimes has construed particular statutory provisions with variation as compared with other jurisdictions.

Text of Articles 3, 4 and 9 of the UCC is appended herewith, for general information and as a basis for noting the variations or departures therefrom by the particular State's statutes.

### Uniform Commercial Code Article 3 Commercial Paper

#### Part 1

#### Short Title, Form and Interpretation

Section 3-101. Short title.

This Article shall be known and may be cited as Uniform Commercial Code — Commercial Paper.

Section 3-102. Definitions and Index of Definitions.

(1) In this Article unless the context otherwise requires

(a) "Issue" means the first delivery of an instrument to a holder or a remitter.

(b) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

(c) A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.

(d) "Secondary party" means a drawer or endorser.

(e) "Instrument" means a negotiable instrument.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance". Section 3-410.

"Accommodation party". Section 3-415.

"Alteration". Section 3-407.

"Certificate of deposit". Section 3-104.

"Certification". Section 3-411.

"Check". Section 3-103.

"Definite time". Section 3-109.

"Dishonor". Section 3-507.

SB 156

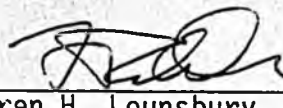
"An Act relating to payment of insurance settlements."

The department is essentially neutral on this bill because we do not feel it corrects the problem it was designed to fix. Many years ago, all insurers in Alaska and elsewhere paid claims with claim drafts. Banks refused to accept drafts for credit until they had been presented and honored at the bank of the insurer. Alaskans were at the mercy of the banks.

Legislation was introduced and passed which required insurance claim payments by bank check. This was to provide prompt cashing privileges. Instead, insurers pulled back draft issuing authority from adjusters and issued checks from the home office instead of the field. Banks held the checks for several weeks for clearing before crediting the claimant's account. Some may have held them much longer.

Now comes another attempt to shorten the time a claimant must wait to receive credit. Insurers will have an additional step because they must go to a bank for a certified check which will delay payments. Banks may continue to hold certified checks for payment. We understand that certified checks are not common any more. Cashiers checks are a possible substitute except that insurers normally print a release on the claim check.

We understand that even though banks may receive credit under the federal reserve bank within a few days there may be situations in which funds are held for much longer periods of time before crediting the claimant's account.

  
Loren H. Lounsbury, Commissioner  
Date: 2/26/85

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March 1, 1985

Senator Fred Zharoff  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: Senate Bill 156

Dear Senator Zharoff:

I represent State Farm Insurance Company and Allstate Insurance Company and am writing to you on their behalf in opposition to Senate Bill 156. Senate Bill 156 would require that payment for a judgment or settlement of a claim in excess of \$25,000 be by certified bank check. We understand the purpose of this requirement is to eliminate delay after the check has been presented to a bank, however we do not believe such a requirement will do so and in fact, such a requirement may well cause more delay than it eliminates. Both Allstate and State Farm currently have the capability of obtaining settlement checks almost immediately. Settlement checks can be written by Alaska personnel, so once a case is settled, or in the alternative a judgment is entered, a check in payment of that claim can be obtained within hours, or even sooner, if necessary. To impose a requirement that the payment be made by certified bank check will require the check to be issued by an out of state bank, and then sent to Alaska. For example, the State Farm checks for Alaska are drawn on a bank in their regional headquarters, Salem, Oregon. Allstate checks are drawn on a Seattle bank. I frankly don't know of any insurance company which issues settlement checks from banks located in Alaska.

The passage of this legislation will impair our ability to issue settlement checks in excess of \$25,000 in a timely manner.

Senator Zharoff  
March 1, 1985  
Re: SB156  
Page 2

HUGHES THORSNESS GANTZ POWELL & BRUNDIN  
ATTORNEYS AT LAW


Most of the complaints that we are aware of regarding the timing of settlement checks concerns a delay in obtaining that check, not a delay once the check is received. In short, if there is any benefit to this legislation, we feel it would be outweighed by the delay the legislation itself will cause in obtaining the certified checks.

We also wish to add that a certified check does not guarantee that a bank will give it credit any sooner than our standard checks. We are aware of no requirement that a certified check be paid upon presentation, and would suspect that the banks will simply wait for the check to be honored before they in turn will get the credit.

If there is a problem with the payment of claims, we suspect it deals with a very small number of insurance companies, and that the problem could more appropriately be dealt with on a case-by-case basis through the Division of Insurance.

Sincerely,

HUGHES THORSNESS GANTZ  
POWELL & BRUNDIN

By:   
Michael L. Lessmeier

MLL/mh

cc: Senator Richard Eliason  
Senator John Sackett  
Senator Don Bennett  
Senator Bill Ray

Bill No. Senate Bill No. 106

Date March 1, 1985

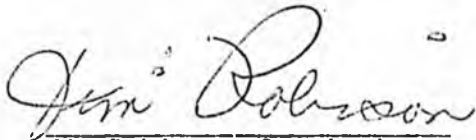
Title "An Act relating to Alaska bidder preference."

Contact: Bob Landau  
465-2700

The Department of Labor supports the passage of Senate Bill 106. This legislation would amend the Alaska bidder's preference law, AS 37.05.230(5), to require that each member of a joint venture must separately qualify as an Alaska bidder in order for the joint venture itself to qualify for the bidder preference.

The Department believes that this legislature is necessary to protect against out-of-state firms joining with a nominal Alaska partner in order to gain preferential bidder status on public contracts. In Iby-Northface vs. Commonwealth Electric Co., 664 p. 2d 557 (Alaska 1983), the Alaska Supreme court interpreted existing law to permit a joint venture to qualify for the bidder's preference even though the primary partner in the venture was a large out-of-state construction firm. Because of the higher cost of doing business for Alaska firms, as well as the high rate of unemployment among Alaskans, an amendment to the law is necessary to ensure that the benefits of a bidder's preference flow only to those persons or businesses that have established a bona fide presence in Alaska.

APPROVED:

  
Jim Robison, Commissioner  
Department of Labor

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: SB 106  
 Title: "relating to Alaska bidder preference"  
 Sponsor: Eliason & Fahrenkamp  
 Requestor: Senate Labor & Commerce  
 Date of Request: 03/01/85

FISCAL DETAIL

Agency Affected: Labor  
 Program Category Affected: Social Services  
 BRU, Program or Subprogram(s) Affected: Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>REVENUE</b>						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: *AS Judy Knight* Judy Knight, Director Phone: 465-2720  
 Division: Administrative Services Date: 3/1/85  
 Approved by Commissioner: *B. Jim Robinson* Date: 3/1/85  
 Agency: Labor

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: SB 156  
 Title: Relating to payment of insurance settlements  
 Sponsor: Rodey  
 Requestor: Rodey  
 Date of Request: 2/26/85

**FISCAL DETAIL**

Agency Affected: Commerce & Econ. Dev.  
 Program Category Affected: Public Protection  
 BRU, Program or Subprogram(s) Affected: Division of Insurance

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
900 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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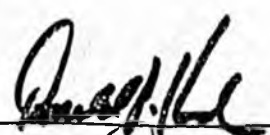
**FUNDING: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>GENERAL FUND</b>						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

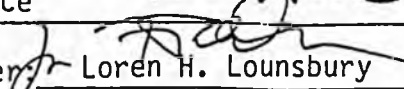
**POSITIONS:**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>FULL-TIME</b>						
<b>PART-TIME</b>						
<b>TEMPORARY</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**ANALYSIS:** Attach a separate page if necessary

Prepared By: Donald A. Koch   
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Phone: 465-2577  
 Date: 2-26-85

Approved by Commissioner: Loren H. Lounsbury   
 Agency: Commerce and Economic Development

Date: 2/26/85

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