

SB

149

STATE OF ALASKA
THE LEGISLATURE

FOUCHY STATE CAPITOL
JUNEAU ALASKA 99801
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 16, 1989

SUBJECT: Sectional analysis of SB 149
(Work Order No. 6-0552A)

TO: Senator Pat Rodey

FROM: Theresa L. Bannister ^{JB}
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. States that agreements to make certain loans or to grant or extend credit in certain situations are unenforceable unless the agreements or some notes or memoranda of them are written and signed by the party to be charged or by the party's agent. Does not apply if the loan or grant or extension of credit is primarily for personal, family, or household purposes. Applies if the person who agrees to loan or grant or extend the credit is in the business of lending or arranging for the lending of money or the granting or extension of credit. Applies to amounts over \$100,000.

Section 2. Applies the bill to an agreement entered into on or after January 1, 1990.

TB:kb
wkk2/015

Testimony presented on Friday, February 17, 1989, regarding Senate Bill No. 149, an Act entitled, "An Act relating to contracts to lend money or grant or extend credit."

Given By: Robert P. Gray
Legislative Committee Chairman
Alaska Bankers Association
and
President of National Bank
of Alaska

In Support Of: Senate Bill No. 149
Unanimous position in support of SB 149
in its present form.

This legislation is modelled after legislation that passed the California Assembly last year and similar legislation has passed in Kansas and Minnesota.

The purpose of the legislation is to minimize misunderstandings between borrowers and lenders. This legislation does that in requiring loan agreements for business purposes, above \$100,000 to be in writing.

The borrower benefits from having a clear understanding with the lender.

Our experience as bankers, leads us to the conclusion that serious misunderstandings concerning business loans, often resulting in mutually destructive litigation, occur by one or other party relying on oral assumptions.

The real estate industry has operated on this basis for many years.

This legislations does not address, nor takes away any rights of consumers under existing regulaticns or laws such as Truth in Lending, Real Estate Settlement Procedure Act, Fair Credit Act, Community Reinvestment Act.

We urge passage of this legislation.

Thank you for allowing us to testify on this proposal and to answer questions.

Senate Bill No. 2789

CHAPTER 1096

An act to amend Section 1624 of the Civil Code, relating to contracts.

[Approved by Governor September 20, 1988. Filed with Secretary of State September 21, 1988.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2789, Maddy. Contracts.

Existing law specifies that certain contracts are invalid unless they are in writing or there exists a note or memorandum of the same, subscribed by the party to be charged or the party's agent.

This bill would include among those contracts a contract, promise, undertaking, or commitment to loan money or to grant or extend credit in an amount greater than \$100,000, not primarily for personal, family, or household purposes, made by a person engaged in the business of lending or arranging for the lending of money or extending credit, except as specified.

This bill would make a statement of legislative intent that this provision shall only apply to a claim or cause of action arising on or after January 1, 1989, as specified. It would also make a statement of legislative intent as to the application of judicially and legislatively recognized defenses and exceptions to these provisions.

This bill would incorporate additional changes to Section 1624 of the Civil Code, contained in SB 2492, if both bills are chaptered and amend that section and this bill is enacted last.

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

SECTION 1. Section 1624 of the Civil Code is amended to read:
1624. The following contracts are invalid, unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent:

(a) An agreement that by its terms is not to be performed within a year from the making thereof.

(b) A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in Section 2794.

(c) An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; such an agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged.

(d) An agreement authorizing or employing an agent, broker, or any other person to purchase or sell real estate, or to lease real estate

for a longer period than one year, or to procure, introduce, or find a purchaser or seller of real estate or a lessee or lessor of real estate where the lease is for a longer period than one year, for compensation or a commission.

(e) An agreement which by its terms is not to be performed during the lifetime of the promisor.

(f) An agreement by a purchaser of real property to pay an indebtedness secured by a mortgage or deed of trust upon the property purchased, unless assumption of the indebtedness by the purchaser is specifically provided for in the conveyance of the property.

(g) A contract, promise, undertaking, or commitment to loan money or to grant or extend credit, in an amount greater than one hundred thousand dollars (\$100,000), not primarily for personal, family, or household purposes, made by a person engaged in the business of lending or arranging for the lending of money or extending credit. For purposes of this section, a contract, promise, undertaking or commitment to loan money secured solely by residential property consisting of one to four dwelling units shall be deemed to be for personal, family, or household purposes.

SEC. 1.5. Section 1624 of the Civil Code is amended to read:

1624. The following contracts are invalid, unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent:

(a) An agreement that by its terms is not to be performed within a year from the making thereof.

(b) A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in Section 2794.

(c) An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; such an agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged.

(d) An agreement authorizing or employing an agent, broker, or any other person to purchase or sell real estate, or to lease real estate for a longer period than one year, or to procure, introduce, or find a purchaser or seller of real estate or a lessee or lessor of real estate where the lease is for a longer period than one year, for compensation or a commission.

(e) An agreement which by its terms is not to be performed during the lifetime of the promisor.

(f) An agreement by a purchaser of real property to pay an indebtedness secured by a mortgage or deed of trust upon the property purchased, unless assumption of the indebtedness by the purchaser is specifically provided for in the conveyance of the property.

(g) A contract, promise, undertaking, or commitment to loan

money or to grant or extend credit, in an amount greater than one hundred thousand dollars (\$100,000), not primarily for personal, family, or household purposes, made by a person engaged in the business of lending or arranging for the lending of money or extending credit. For purposes of this section, a contract, promise, undertaking or commitment to loan money secured solely by residential property consisting of one to four dwelling units shall be deemed to be for personal, family, or household purposes.

This section does not apply to leases subject to Division 10 (commencing with Section 10101) of the Commercial Code.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 1624 of the Civil Code proposed by both this bill and SB 2492. It shall be operative at the same time SB 2492 becomes operative if (1) both this bill and SB 2492 are enacted and become effective on January 1, 1989, (2) this bill and SB 2492 both amend Section 1624 of the Civil Code, and (3) this bill is enacted after SB 2492, in which case Section 1 of this bill shall only be operative until SB 2492 becomes operative.

SEC. 3. It is the intent of the Legislature that subdivision (g) of Section 1624 of the Civil Code shall only apply prospectively to any claim or cause of action arising on or after January 1, 1989, and not otherwise affect any statutory or common law rights in a civil action.

It is also the intent of the Legislature that judicially and legislatively recognized defenses and exceptions to the application of subdivisions (a) to (f), inclusive, of Section 1624 also apply to subdivision (g) of Section 1624.

O

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Relating to contracts to lend
money or grant or extend credit
Sponsor: Rodey
Requestor: _____

Agency Affected: Commerce & Econ. Dev.
BRU: Banking, Securities & Corp.
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Willis F. Kirkpatrick, Director *WFK* Phone: 465-2521
Division: Banking, Securities & Corp. Date: 2/5/89

Approved by Commissioner: Larry Mercurieff *LM* Date: 2/3/89
Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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Impacted Agency(ies)



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

| | | | |
|--|---|--|------------------|
| DEPARTMENT Commerce & Econ. Dev. | DIVISION Banking, Securities and Corporations | BILL NUMBER SB 149 | SPONSOR Rodey |
| SHORT TITLE OF BILL Relating to contracts to lend money or grant or extend credit | | | |
| DEPARTMENT POSITION Neutral | | | |
| PREPARED BY Willis F. Kirkpatrick <i>WFK</i> | DATE | COMMISSIONER'S SIGNATURE <i>[Signature]</i> | DATE 2/8/89 |

SUMMARY

| | |
|---|---|
| OTHER AGENCIES AFFECTED BY BILL None known | CONSTITUENT GROUPS AFFECTED BY BILL None known |
| ORGANIZATIONAL SUPPORT FOR BILL None known | ORGANIZATIONAL OPPOSITION TO BILL None known |

FISCAL IMPACT: - NONE - FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Events leading up to this bill are not known.
The intent appears to provide that certain advances of credit are unenforceable unless made in writing.

ANALYSIS OF BILL/PROGRAM EFFECTS

A new subsection 13 is added to AS 09.25.010. Statute of frauds which provides that a loan over \$100,000 is unenforceable if not personal and made by a person who is engaged in the business of lending.

This bill has no effect on the division's programs.

AMENDMENTS PROPOSED

None

3266D-2/020889a

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.



Representative Dave Donley, Chair

House Labor & Commerce Committee

DATE: 3-23-89

PLACE: #17

SUBJECT OF MEETING:

HB 166

SB 149

| NAME | REPRESENTING | BUSINESS/PERSONAL MAILING ADDRESS | ZIP | (H) PHONE | (W) PHONE | DO YOU WANT TO TESTIFY? | WHAT SUBJECT/ WHICH BILL? |
|---------------------------|--------------------|-----------------------------------|-----|-----------------|-----------|-------------------------|------------------------------------|
| <i>Mark Bevel</i> | <i>Sen. Donley</i> | - | | - | - | (Y) N | <i>If needed</i> SB 149 |
| <i>Willis Kirkpatrick</i> | <i>Div Banking</i> | | | | | (Y) N | <i>If needed</i> SB 149 |
| <i>Frederic Sullivan</i> | <i>NFIB</i> | <i>430 'C' St #201 Anch 99501</i> | | <i>226-2246</i> | | (Y) N | <i>SB 166</i> |
| <i>John Kertel</i> | <i>AGS</i> | <i>Box K Juneau</i> | | <i>465 3771</i> | | Y N | <i>If needed</i> HB 166 |
| | | | | | | Y N | |
| | | | | | | Y N | |
| | | | | | | Y N | |
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